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सं. 32] नई दिल्ली, अगस्त 12—अगस्त 18, 2018, शनिवार/श्रावण 21—श्रावण 27, 1940
No. 32] NEW DELHI, AUGUST 12—AUGUST 18, 2018, SATURDAY/SRAVANA 21—SRAVANA 27, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 1 अगस्त, 2018

का.आ. 1223.—भारतीय जीवन बीमा निगम श्रेणी 3 और श्रेणी 4 कर्मचारी (सेवा के निबंधन और शर्तों का संशोधन) नियमावली, 1985 के नियम 13 के उप-नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यह निर्धारित करती है कि उक्त उप नियम के अन्य उपबंधों के अध्वधीन, श्रेणी 3 और श्रेणी 4 के प्रत्येक कर्मचारी को 01 अप्रैल, 2016 से 31 मार्च, 2017 तक की अवधि के लिए बोनस के बदले में भुगतान, उनके वेतन के 15 प्रतिशत की दर से किया जाएगा।

[फा.सं. एस-11012/01/2018-बीमा-1]

भूमिका वर्मा, संयुक्त निदेशक

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 1st August, 2018

S.O. 1223.—In exercise of the powers conferred by sub-rule (2) of rule 13 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985, the Central Government hereby determine that, subject to the other provisions of the said sub-rule, the payment in lieu of bonus for the period from 1st April, 2016 and ending with 31st day of March, 2017 to every Class III and Class IV Employee shall be at the rate of 15 per cent of his/her salary.

[F. No. S-11012/01/2018- Ins.-I]

BHUMIKA VERMA, Jt. Director

(राजस्व विभाग)

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1224.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन राजस्व आसूचना निदेशालय, मुख्यालय, नई दिल्ली, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[फा. सं. ई-11017/1/2012-एडी(हिन्दी-4)]

डॉ० सतीश चंद्र, संयुक्त निदेशक (रा०भा०)

(Department of Revenue)

New Delhi, the 8th August, 2018

S.O. 1224.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976 the Central Government hereby notifies the Directorate of Revenue Intelligence, Headquarter, New Delhi Under the Department of Revenue, where more than 80% staff have acquired the working knowledge of Hindi.

[F.No. E-11017/1/2012-AD(HINDI-4)]

Dr. SATISH CHANDRA, Dy. Director (OL)

नई दिल्ली, 9 अगस्त, 2018

का.आ. 1225.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग के अधीन राष्ट्रीय सीमा शुल्क, अप्रत्यक्ष कर एवं नार्कोटिक्स अकादमी नासेन, फरीदाबाद, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/1/2012-एडी(हिन्दी-4)]

डॉ० सतीश चंद्र, संयुक्त निदेशक (रा०भा०)

New Delhi, the 9th August, 2018

S.O. 1225.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976 the Central Government hereby notifies the National Academy of Customs, Indirect Taxes & Narcotics, Nacen, Faridabad Under the Department of Revenue, where more than 80% staff have acquired the working knowledge of Hindi.

[F.No. E-11017/1/2012-AD(HINDI-4)]

Dr. SATISH CHANDRA, Dy. Director (OL)

विदेश मंत्रालय**(सी.पी.वी. प्रभाग)**

नई दिल्ली, 27 जुलाई, 2018

का.आ. 1226.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, अबु धाबी में श्री राजेंद्र कुमार मीणा, सहायक अनुभाग अधिकारी को दिनांक 27 जुलाई, 2018 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द, निदेशक (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS**(C.P.V. DIVISION)**

New Delhi, the 27th July, 2018

S.O. 1226.—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Rajender Kumar Meena, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Abu Dhabi to perform the Consular services with effect from 27th July, 2018.

[No. T-4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 27 जुलाई, 2018

का.आ. 1227.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, वैनकूवर में श्री राहुला बरुआ, सहायक अनुभाग अधिकारी को दिनांक 27 जुलाई, 2018 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कौंसुलर)

New Delhi, the 27th July, 2018

S.O. 1227.—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Rahul Barua, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Vancouver to perform the Consular services with effect from 27th July, 2018.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 2 अगस्त, 2018

का.आ. 1228.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, टोरोंटो में :

(क) श्री योगेश शर्मा, सहायक अनुभाग अधिकारी, तथा

(ख) श्री संजय, सहायक अनुभाग अधिकारी को दिनांक 2 अगस्त, 2018 से सहायक कौंसुलर अधिकारियों के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2016]

प्रकाश चन्द, निदेशक (कौंसुलर)

New Delhi, the 2nd August, 2018

S.O. 1228.—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints :

- (i) Shri Yogesh Sharma, Assistant Section Officer, and
- (ii) Shri Sanjay, Assistant Section Officer as Assistant Consular Officers in the Consulate General of India, Toronto to perform the Consular services with effect from 2nd August, 2018.

[No. T-4330/01/2016]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 3 अगस्त, 2018

का.आ. 1229.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, बर्मिंघम में श्रीमती ज्ञानवी सिंह कसाना, सहायक अनुभाग अधिकारी को दिनांक 3 अगस्त, 2018 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2014]

प्रकाश चन्द, निदेशक (कौंसुलर)

New Delhi, the 3rd August, 2018

S.O. 1229.—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Smt. Gyaanvi Singh Kasana, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Birmingham to perform the Consular services with effect from 3rd August, 2018.

[No. T-4330/01/2014]

PRAKASH CHAND, Director (Consular)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1230.—केंद्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार के दिनांक 17.05.2018 की अधिसूचना संख्या-एमआईएससी-2017/सीआर-45/एसपीएल-3(क) द्वारा दी गई सहमति से एतद्वारा भारतीय दंड संहिता 1860 (1860 की अधिनियम सं. 45) की धारा 420 एवं 511 तथा साथ ही सूचना प्रौद्योगिकी अधिनियम (आईटी अधिनियम) 2000 की धारा 66ख, 66ग और 66घ के अंतर्गत मरीन ड्राइव, मुंबई में दर्ज प्राथमिकी संख्या 243/2016 के दंडनीय अपराधों के लिए तथा इन तथ्यों के सम्पादन के दौरान अन्य कोई अपराध या अपराधों से संबंधित प्रयास, दुष्प्रेरण, और आपराधिक षडयंत्र के लिए अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार संपूर्ण महाराष्ट्र राज्य पर करती है।

[फा. सं. 228/15/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 8th August, 2018

S.O. 1230.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of State Government of Maharashtra issued vide Notification No.MISC-2017/CR-45/SPL-3(A), Dated 17.05.2018 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Maharashtra, for investigation of the case FIR No.243/2016 registered at , Marine Drive, Mumbai for the offence punishable under sections 420 and 511 of the Indian Penal Code, 1860 (Act No.45 of 1860) as well as under Sections 66B, 66C and 66D of Information Technology Act, 2000 and any other offence, attempt, abetment and conspiracy in relation to or in connection with the above mentioned offence committed in the course of the same transaction arising out of the same facts.

[F. No. 228/15/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नागर विमानन मंत्रालय

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1231.—राष्ट्रपति, एअर इंडिया लिमिटेड के संस्था के बहिर्नियमों के खंड 98 में प्रदत्त शक्तियों का उपयोग द्वारा इस अधिसूचना को जारी किए जाने की तिथि अथवा अगामी आदेशों तक, इनमें से भी पहले हो, 3 वर्ष की अवधि के लिए नीचे उल्लिखित दो व्यक्तियों को एअर इंडिया के निदेशक मंडल में गैर-सरकारी निदेशक के पद पर सहर्ष नियुक्त है :-

- (i) श्री वाई.सी. देवेश्वर, अध्यक्ष, आई.टी.सी.
- (ii) श्री कुमार मंगलम बिड़ला, अध्यक्ष, आदित्य बिड़ला ग्रुप

[सं. एवी-18013/007/2007-एआई]

चन्द्र किशोर शुक्ला, अवर सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 8th August, 2018

S.O. 1231.—In exercise of the powers conferred under Section 98 of the Articles of Association of the Air India Limited, the President pleased to appoint the following two persons as part-time non-official Director on the Board of Air India Limited for a period of 3 years from the date of issue of this Notification or until further orders, whichever is earlier.

- (i) Shri Y.C. Deveshwar, Chairman, ITC
- (ii) Shri Kumar Mangalam Birla, Chairman, Aditya Birla Group

[No. AV-18013/007/2007-AI]

CHANDRA KISHORE SHUKLA, Under Secy.

अंतरिक्ष विभाग

बंगलूर, 7 अगस्त, 2018

का.आ. 1232.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, एतद्वारा अंतरिक्ष विभाग के निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :-

राष्ट्रीय वायुमंडलीय अनुसंधान प्रयोगशाला,
(एन.ए.आर.एल.), गादंकी, तिरुपति
पाकला मंडल, जिला - चित्तूर,
आंध्र प्रदेश-517 112

[सं. 8/1/10/2011-हिं.]

के. वी. रमणा बाबू, अवर सचिव

DEPARTMENT OF SPACE

Bangalore, the 7th August, 2018

S.O. 1232.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the following Office of the Department of Space, whereof more than 80 per cent staff have acquired the working knowledge of Hindi :

National Atmospheric Research Laboratory,
(NARL), Gadanki, Tirupati,
Pakala Mandal,
Chittoor District, (Andhra Pradesh) – 517 112

[No. 8/1/10/2011-H.]

K. V. RAMANA BABU, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, गोदावरिखानी के पंचाट (संदर्भ संख्या 13/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.07.2018 को प्राप्त हुआ था।

[सं. एल-22013/01/2018-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th August, 2018

S.O. 1233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 30.07.2018.

[No. L-22013/01/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI
ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI****Present:** SRI SAMBASIVA RAO NAIDU, Chairman-cum-Presiding Officer,ON MONDAY, THE 19th DAY OF MARCH, 2018**INDUSTRIAL DISPUTE No. 13 OF 2013****Between:-**

1. Govindula Raju, W/o. Bheemaiah, aged about 50 years, Occ: Household,
 2. G. Thirupathi, S/o. Bheemaiah, aged about 20 years, Occ: Unemployee,
 3. G. Soujanya, D/o. Bheemaiah, aged about 16 years, Occ:
 4. G. Swarna, D/o. Bheemaiah, aged about 21 years, Occ : Household,
- All are R/o. Achalapur, V/o.Thandur (M), Adilabad District.

... Petitioners/Employee

AND

1. The General Manager, SCCL, Srirampur Area, Srirampur Projects,
Post: Srirampur, District Adilabad.
2. Managing Director, SCCL, Administration,
Post: Kothagudem, District Khammam.

... Respondents/Employer

This case coming before me for final hearing in the presence of Sri S. Baghavanth Rao, Advocate for the Petitioners/Employee and of Sri D.Krishna Murthy, Counsel for the Respondents/Employer; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This is a petition filed by the petitioner under section 2-A (2) of Industrial Disputes Act which herein after will be referred as ID Act for convenience sake with a prayer to set aside the order dated 28-12-2007 in file No.SRP/PER/13008/6336, dt.25-12-2007 and to direct the respondents to admit the 2nd petitioner into service by ordering MMC to the petitioner No.1 from 14-12-2005 to the date of realization of MMC wages @ Rs.3,000/- per month from 14-12-2005 and @ Rs.6,000/- from 01-05-2008. The following is the brief case of petitioner as per their petition.

2. One Govindula Bheemaiah who is no more now was an employee of Singareni Collieries Company Limited, Srirampur Area which is represented by respondents herein. The petitioner after working in mine missed from the mine on 14-12-2005. The 1st petitioner is wife, petitioner No.2 is son and other petitioners are daughters of said Bheemaiah. He has performed the marriage of petitioner No.4 during his lifetime. The said Govindula Bheemaiah was appointed in Singareni Collieries Company Limited on 03-01-1986 and he discharged his duties to the fullest satisfaction of the officers till the date on which he was removed from service on 26-12-2007. The petitioner states that on 14-12-2005 Bheemaiah attended the duty and was missing from the mine. Thereby the petitioner gave information to the police but the police did not register the case for his missing. The petitioner lodged a complaint with SHO, Srirampur and the same was registered as a case in Cr.No.9/2006. The police conducted search and they posted a notice namely look out notice of man missing at Srirampur and ultimately closed the file on 28-06-2009 stating that the offence is not detectable. The petitioners have stated that late Bheemaiah was charge sheeted for his absence from the duties from 16-07-2006 to 31-12-2006. A formal enquiry was conducted against him and he was dismissed from service on 26-12-2007. There was no charge sheet or any charge memo. So the enquiry is conducted against law and against facts. The respondents have adopted unfair labour practice against the petitioners and victimized the petitioners herein. The enquiry was conducted behind the back of petitioners and Bheemaiah was terminated from service. The petitioners states that 1st petitioner is entitled for MMC from the date of 14-12-2005 till the date of death of 1st petitioner or till the 2nd petitioner gets employment. The petitioners Nos.1 to 3 approached the respondents and sought for employment and also for release of MMC but the respondents did not provide employment nor they paid amount to the petitioners. The case of petitioners is covered by statements and also decisions of Hon'ble Supreme Court. The petitioner had got effective remedy under section 12(3) of ID Act R/w. 11 (b) of ID Act and the petitioners are entitled to MMC @ Rs.3,000/- from 03-01-1999 and @ Rs.6,000/- from the date of 20-11-2009. The petitioner made a representation to the company but there was no response thereby they prayed for setting aside the removal order dated 25-12-2007 and also to pay MMC to the 1st petitioner from 14-12-2005 @ Rs.3,000/- and @ Rs.6,000/- from 01-05-2008. Both the respondents

have appeared before the court. R-1 filed counter which was adopted by the 2nd respondent. The following is the brief case of respondents as per their counter.

3. The present Industrial Dispute filed by the petitioner is barred by limitation. According to Section 2-A (2) of the ID Act, an application referred in Sub Section (2) of 2-A shall be made to the Labour Court or Tribunal before the expiry of (3) years from the date of discharge, dismissal, retrenchment or otherwise termination of the workman. The husband of the petitioner No.1 was dismissed on 25-12-2007. The petitioners kept quiet for a period of (6) years and raised the present dispute which is barred by limitation. The respondents further states that said Bheemaiah was appointed as Coal filler in the respondent company on 03-02-1986, his last date of duty was 15-12-2005. Thereafter he never approached the respondent company. A charge sheet dated 21-02-2009 for his absence was issued. The respondent company is not aware of his missing case vide Cr.No.9/2006. The dependants of the employee did not inform the man missing case to the respondent company. The respondents further stated that the petitioner approached the respondent in 2009 and requested for settlement of terminal benefits of Bheemaiah. In fact before the petitioner approached the respondent a charge sheet dated 21-02-2007 was issued against the said Govindula Bheemaiah. He did not attend the domestic enquiry. A general notice in the paper was given several times. There was no response, to the said notices therefore said Bheemaiah was dismissed from service w.e.f., 26-12-2007. The respondents company settled the terminal benefits of Bheemaiah in favour of 1st petitioner on 09-10-2009. While furnishing the details of the payments made to the petitioners herein these respondents stated that said Bheemaiah being an underground employee was excepted to put minimum 190 musters in a calendar year but he was a chronic absentee, he was continuously absent for 160 days in the year 2006. It amounts to misconduct. A charge sheet was given against the said Bheemaiah. A copy of the charge sheet was sent to the residential address but the same was returned as undelivered. A paper publication dated 31-07-2007 was issued in Vartha telugu news paper but there was no response. Therefore, an ex parte enquiry was conducted. The enquiry officer submitted a report holding the ex-employee was guilty of misconduct of duties. A show cause notice was issued to said Bheemaiah. There was no response thereby a general notice in Vartha dated 04-10-2007 was issued but the said Bheemaiah did not respond to the show cause notice. Therefore, the respondents passed orders dismissing the said Bheemaiah. The respondents states that the petitioners are not entitled to MMC and they are not eligible for dependant employment since Bheemaiah was dismissed from service. The case of the petitioners was not covered by any settlement between the management or trade unions. Therefore, they prayed for dismissal of the Industrial Dispute.

4. I have heard both parties.

Now the point for consideration is whether the petitioners are entitled to direction the respondent to appoint the petitioner No.2 into service along with ordering MMC to the petitioner No.1 from 14-12-2005 to till up to realization of MMC wages of Rs.3,000/- from 14-12-2005 and Rs.6,000/- from 01-05-2008, if not, to what relief?

5. This Industrial Dispute is filed by (4) petitioners who are wife and children of one Govindula Bheemaiah. As per the admitted case of both parties the said Bheemaiah worked in Singareni Collieries Company Limited which herein after will be referred as S.C.C.Ltd. The petitioners have filed this petition under section 2A(2) of ID Act and the following is the prayer of petitioners in the petition.

“It is therefore prayed that, the Hon’ble Court may be pleased to direct the respondent to appoint the petitioner No.2 into service along with ordering MMC to the petitioner No.1 from 14-12-2005 to till up to realization of MMC wages of Rs.3,000/- from 14-12-2005 and Rs.6,000/- from 01-05-2008 or order or orders as the Hon’ble Court deems fit and proper interms of settlements and Supreme Court Orders, by set aside the removal order dt.26-12-2007 vide file No. Ref.SRP/PER/13008/6336, dt.25-12-2007 on the file of 1st respondent for which act of justice the petitioners shall ever pray”.

6. The petitioners have claimed that the said Bheemaiah attended the duty on 14-12-2005 but did not return to home and his whereabouts not known since then. They have claimed that they searched for him and filed a complaint before the police. The petitioners states that they waited for (7) years and as his whereabouts are not known for more than (7) years, it is deemed that he is no more now. Therefore the petitioners prayed for appointment of 2nd petitioner in S.C.C.Ltd., and also for M.M.C. The basis for the said claim is settlements between the Management and workman of S.C.C.Ltd., and also the orders of Hon’ble Supreme Court. However, the petitioners did not furnish the details of alleged settlements and orders of Hon’ble Supreme Court.

7. The respondents disputes the claim, according to the respondents the said Bheemaiah failed to attend the duties from 14-12-2005, as such he was removed from the service after following the procedure and after a detailed enquiry. The respondents have claimed that the petition filed by the petitioners is barred by limitation and the reliefs sought for in the petition cannot be granted under section 2A(2) of ID Act. In para No.7 of the counter the respondents have further stated that the petitioners are entitled to gratuity, FBIS, CMPF and pension. They have already paid gratuity to the petitioners by way of cheque and other amounts to be paid by Regional Commissioner, CMPF, Godavarikhani.

8. In order to prove the claim the respondents have filed Ex.M-1 to M-10 viz., enquiry proceedings etc.

9. The learned counsel for the petitioners has relied upon a judgment between “Union of India and others vs Polimetla Mary Sarojain and another reported in 2017 (3) ALD 285 (DB) and argued that the petitioners are entitled to the reliefs prayed in the petition. Even as per the said judgment the Hon’ble High Court made the following observations:

“When a person is not seen for quite sometime, it may be case of ‘Man Missing’ for people at house. But for the office where he is working, it will only be a case of unauthorized absence. The employer is entitled to follow disciplinary action against every employer who absents himself unauthorized. At this stage, the employer cannot be expected to anticipate that the employee will not come back for (7) years so as to arrest the raising of the presumption under section 108. (para 23) The Hon’ble High Court was pleased to observe that the family members of an employee whose whereabouts are not known for more than (7) years to receive gratuity, family person etc. The right of employer to take disciplinary action and impose a penalty of removal or dismissal is not taken away by section 108 I.E.Act. Therefore, an order of removal or dismissal passed before the date on which the presumption under section 108 arises cannot become a mollify post facto”

10. In the case on hand the petitioners have claimed that Bheemaiah was not seen from 14-02-2014. However the respondents conducted enquiry and removed the said Bheemaiah on 25-12-2007 itself. The respondents have further stated that the petitioners have filed W.P.No.13051/2008 with a prayer to set aside the dismissal order, but got the WP withdrawn without reserving any right to file the present ID or without obtaining the leave of the Hon’ble High Court. The petitioners did not dispute this fact. Therefore, the record would show that respondents have removed the said Bheemaiah on 25-12-2007. The present ID was filed in December, 2012, which is beyond the period of limitation. In fact as seen from Section 2A(2) of the ID Act any dispute or difference between workman and his employer in connection with the discharge, dismissal, retrenchment termination can be questioned before an Industrial Tribunal. Therefore by virtue of Section 2(A) 2 of ID Act the employee who was dismissed, discharged etc., can file the petition. But in the present petition the petitioners without questioning the said dismissal sought for employment of 2nd petitioner by way of dependent employment and for monetary benefit which in my sincere opinion cannot be ordered in the present petition.

11. It is a fact the Hon’ble High Court in the above referred judgment was pleased to observe that the family members of an employee whose whereabouts are not known and who was dismissed from service are entitled to gratuity etc. As seen from the counter the respondents have already settled the said benefits. The petitioners did not place any such “settlement” under which they can claim dependent employment and monthly monetary compensation. The petitioner did not explain how they can maintain the present ID even after dismissal of their WP which was filed for setting aside the dismissal order of said Bheemaiah. It is not their case that they have obtained necessary leave from Hon’ble High Court to file the present ID. They did not reserve any right to file the ID while withdrawing their WP. For the above reasons it cannot be said that the said Bheemaiah was dead from the date on which he went missing. In the light of the observation made by Hon’ble High Court in the above stated judgment the punishment imposed by respondent i.e., removal of service of said Bheemaiah cannot be held illegal. Therefore, the petition is liable to be dismissed.

12. In the result, the petition is dismissed.

Dictated to Typist, transcribed by him, corrected and pronounced by me in the open court, on this the 19th day of March, 2018.

SAMBASIVA RAO NAIDU, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN

-Nil-

FOR MANAGEMENT

-Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	13-05-2011	Demand letter with RPAD receipts and ack.,
Ex.W-2	Dt.	25-12-2007	Dismissal order (attested copy) under RTI
Ex.W-3	Dt.	26-12-2007	Letter of name removal issued by Dy.G.M., SCCL

Ex.W-4	Dt.	06-06-2011	Gram Panchayat Certificate as petitioner not appearing and complaint given by his family members
Ex.W-5	Dt.	-	Look out notice (Xerox)
Ex.W-6	Dt.	12-01-2006	FIR attested copy
Ex.W-7	Dt.	12-04-2008	Letter of the Dy. GM, RK 7 Incline (Xerox)
Ex.W-8	Dt.	28-06-2009	Closure report of the police (Xerox)
Ex.W-9	Dt.	13-07-2011	Family members certificate
Ex.W-10	Dt.	30-06-2011	Affidavit of petitioner.

FOR MANAGEMENT:-

Ex.M-1	Dt.	21-02-2007	Office copy of charge sheet
Ex.M-2	Dt.	21-02-2007	Postal returned cover sent to the petitioners husband
Ex.M-3	Dt.	31-08-2007	Paper publication of charge sheet
Ex.M-4	Dt.	10-09-2007	Enquiry proceedings
Ex.M-5	Dt.	10-09-2007	Enquiry report
Ex.M-6	Dt.	13-09-2007	Office copy of show cause notice
Ex.M-7	Dt.	13-09-2007	Returned postal cover with RPAD
Ex.M-8	Dt.	04-10-2007	Paper publication of show cause notice
Ex.M-9	Dt.	25-12-2007	Office copy of dismissal order
Ex.M-10	Dt.	25-12-2007	Undelivered postal cover sent to petitioners husband.

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, गोदावरिखानी के पंचाट (संदर्भ संख्या 22/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.07.2018 को प्राप्त हुआ था।

[सं. एल-22013/01/2018-आईआर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 30.07.2018.

[No. L-22013/01/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI
ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI**

Present: SRI SAMBASIVA RAO NAIDU, Chairman-cum-Presiding Officer

ON THURSDAY, THE 8th DAY OF FEBRUARY, 2018

INDUSTRIAL DISPUTE No.22 OF 2012**Between:-**

1. Karavula Madunamma, W/o. Rajaiah, Aged about 50 years,
Occ: House hold, R/o: Godavarikhani, District: Karimnagar.

... Petitioner/Employee

2. Karavula Indira, D/o. Rajaiah, Aged about 26 years,
Occ: House hold, R/o: Godavarikhani.
3. Karravula Praveen, S/o. Rajaiah, Aged about 20 years,
Occ: Unemployed, R/o: Godavarikhani, District: Karimnagar.

(The petitioners 2 and 3 are the Legal heirs of late Rajaiah).

4. K.Sharada, D/o. Late Rajaiah, Aged: 30 years.
 5. K.Mallesh, S/o. Late Rajaiah, Aged: 28 years.
 6. K.Aruna, D/o. Late Rajaiah, Aged: 26 years
- (The petitioners 4,5,6 are the Married persons of late Rajaiah)

... Petitioners/Employees

AND

1. General Manager, SC Company Limited, Ramagundam Area-1,
Godavarikhani.
2. Managing Director, SC Company Limited, Kothagudem
(Administration), District: Kothagudem.

... Respondents/Employer

This case coming before me for final hearing in the presence of Sri S. Bhagavanth Rao, Advocate for the Petitioners/Employees and of Sri D. Krishna Murthy, Advocate for the Respondents/Employer; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This is a petition filed by petitioners 1 to 6 U/sec. 2-A(2) of Industrial Disputes Act, which hereinafter will be referred as I.D. Act with the following prayer.
2. "It is therefore prayed that the Honorable Court may be pleased to direct the respondent No.1 and 2 to appoint the petitioner No.1 to 3 into employment as afresh to any one of them or VRS GHS to the bereaved family of the deceased husband of petitioner or orders as the Honorable Court deems fit and proper in the interest of the Justice and fair play for which act the petitioner's shall ever pray, for set aside dismissal order dated 18-10-2004".
3. The following is the brief case of petitioners as per their petition:

One Karravula Rajaiah was the husband of petitioner No. 1 father of the other petitioners. He was appointed in the SCCL on 01-01-1975 he was in service till 18-10-2004 on which date he was dismissed from service on account of some misconduct. The petitioners have claimed that the service conditions of said Rajaiah were governed by various standing orders, schemes and settlements of the company. While he was in service the first respondent attributed the misconduct U/sec. 25.25 of standing orders of the company. He has participated in the enquiry on 20-02-2004. It appears from the averments of the petition that a departmental enquiry was initiated against said Rajaiah for his continuous absence for duties. The petitioners have claimed that Rajaiah suffered Tuberculosis, he has obtained treatment for the said disease but he became weak. However he has successfully discharged his duties up to 2005. At the time of domestic enquiry he wanted to produce the medical record but the first respondent suppressed those material documents. He was victimized by the respondents who have adopted unfair labour practice and issued proceedings by which he was dismissed from service. The petitioners have claimed that the respondent did not serve the dismissal order on the said Rajaiah. However colliery Manager and Superintendent of Mines have admitted that Rajaiah has got unblemished service and promised him that he can opt for Voluntary Retirement Scheme, he has accepted the said proposals. But without giving such an opportunity the respondents have issued proceedings by which Rajaiah was dismissed from service. They have also claimed that Rajaiah made efforts by roaming the offices of R-1 and R-2 from 2004 to 2007 he tried to secure re-appointment through union labour but in the mean time he died without securing any employment. The petitioners did not give the details as to how and why Rajaiah was dismissed from service and what were efforts made by him to secure

employment. But in the present application they sought for a direction to the respondents to provide employment to petitioners 1 to 3.

4. Both the respondents have appeared before this tribunal R-1 filed counter which was adopted by R-2. According to the counter filed by the respondent it shows that said Rajaiah who was appointed in SCCL remind absent from duty without sanctioned leave or without any sufficient cause. He has put in 54 musters during 2003. As such a charge sheet dated 20-02-2004 was issued on him. The continuous absence of Rajaiah was misconduct as per Company's Standing Orders.

5. The respondents have further averred that there was no such promise as claimed by the petitioners that the respondent have agreed to allow the said Rajaiah to OPT for VRS and they put the petitioners to strict proof of their averments. The respondents have claimed that Rajaiah was appointed in the respondent company on 07-03-1975 and later he was designated as General Mazdoor. He worked at G.D.K No.5A Incline. During 2003 his attendance was 54 actual musters. A charge sheet was served on the workman on 20-02-2004 for his habitual, late attendance or habitual absence from duty without sufficient cause.

6. He has submitted a written explanation on 25-02-2004 stating that he fell sick and he could not attend duty during 2003. But he could not submit any documentary prove in support of the ill health, his explanation was not satisfactory thereby an enquiry was ordered on 05-05-2004. He has participated in the enquiry, the enquiry officer explained the charges in telugu to the said Rajaiah. When asked by the enquiry officer whether he has got any objection to the charges he reported no objection and he has informed the enquiry officer that he don't want any help of co-worker or any labour to defense his case. As such he has admitted the charges and pleaded guilty of misconduct. At the time of said enquiry he has assured the respondent that he will improve the attendance by putting a minimum required attendance. He made such assurance in the presence of his family numbers and trade union representatives. The consequences of his regular absenteeism were explained to him he gave an undertaking on 19-05-2004 assuring that he will put minimum 22 musters during the observation period from 01-06-2004 to 31-08-2004 but he fail to follow the undertaking. He did not attend the duty from June, 2004 to August, 2004 his attendance was only 1 muster. He failed to put in mandatory musters of 190 per year he did not improve the attendance. The enquiry officer found him guilty of misconduct. A show cause notice along with copies of enquiry report was issued to him for his remarks. He made a representation on 21-07-2004 but it was found not satisfactory. Thereby the respondent company was constrained to dismiss him from service from 18-10-2004.

7. The respondents have further claimed that in view of the said dismissal order Rajaiah filed I.D.No.19/2005 before this court and sought for set aside the dismissal order and for a direction to the respondent company to reinstate him into service with continuity of service with all consequential benefits including full back-wages. The respondents have contested the said industrial dispute. They filed a detailed counter, this tribunal passed an award on 23-12-2006 and dismissed the petition filed by the said workman. The award was published in the gazette on 25-08-2007 vide notification No. L-22013/1/2007-IR (C-II) dated 01-08-2007 U/sec. 17 of I.D. Act. If the legal heirs of Rajaiah have got any objection they can approach the Honorable High court and challenge the award. They have no right to have afresh I.D. before this tribunal on the same cause of action. The respondents have pleaded that this tribunal already decided the Industrial Dispute between management and workman namely Rajaiah vide its award in I.D.No.19/2005. Therefore according to the respondents the present I.D is barred by the principles of Resjudicata.

8. The respondents have also claimed that the scheme of voluntary retirement was introduced in 2005, the relevant eligibility criteria for the said scheme according to the respondents is reproduced hereunder:

Group A: *An employee who has completed 10 years of service or completed 40 year of age (as on 01-08-2005) and fulfilling the conditions laid down in Para.3 of the Circular may seek voluntary retirement, by written application.*

Group B: *An employee who has completed 50 years of age (as on 01-08-2005) and fulfilling the conditions laid down in Para-3 of the Circular may seek voluntary retirement, by a written application.*

3. Criteria of eligibility of an employee to opt for voluntary retirement:

3.1. Those employees, who will be retiring on superannuation on or before 31-07-2007 are not eligible for seeking voluntary retirement under this scheme. Those employees who are facing disciplinary proceedings either for unauthorized absenteeism or for any other misconduct during the operation period of the scheme are not entitled for seeking voluntary retirement.

However, after the disciplinary proceedings are disposed of during the operation period of the scheme they may seek voluntary retirement, if they are other-wise eligible.

9. Therefore according to the respondents since the said Rajaiah was dismissed from service on 18-10-2004 neither he nor his family members are entitled to opt for VRS. The respondents have denied and disputed the other averments of the petition. While reproducing the observations made by this tribunal in I.D.No.19/2005 in its order dated 23-11-2006,

the respondents further pleaded that the petitioners have no right to maintain the present I.D and they ought to have challenged the award before the Honorable High Court and prayed for dismissal of the present petition.

10. I have heard both parties.

Now the point for consideration is whether the petitioners are entitled to claim employment in the respondent company as prayed for?

11. The petitioners herein are wife and children of one Karravula Rajaiah who worked as General Mazdoor in SCCL. He worked in 5A Incline. The petitioners have claimed that said Rajaiah was in service till 18-10-2004 and Respondent company dismissed him from service on account of mis conduct, and they have pleaded that the Respondent did not serve the dismissal order on said Rajaiah, but colliery Manager and Superintendent of mine having accepted the unblemished service of Rajaiah Promised him that he can opt for voluntary retirement, without giving such an opportunity dismissed him from service, as such the petitioners sought for employment of petitioners.

12. However the respondent has claimed that there was no such promise, but in fact the said Rajaiah was continuously absent for the duties, a regular departmental enquiry was conducted against him. The enquiry officer found Rajaiah as guilty of misconduct. The respondents after obtaining his reply/remarks after serving a show cause notice, removed him from service. He has filed I.D.No.19/2005 but it was dismissed on merits.

13. No where in the petition, the petitioners have stated anything about the absence of Rajaiah for the duties, about the departmental enquiry, the findings of enquiry officer or about the I.D which Rajaiah filed after his removal from service. The petitioners have pleaded as if the colliery Manager and Superintendent of mines made a promise to said Rajaiah as if he can opt for voluntary retirement etc.

14. However the record produced by respondent would show that Rajaiah was dismissed from service on the ground of continuous absenteeism and that removal order was passed after a detailed departmental enquiry. The documents filed by respondent clearly show that a regular domestic enquiry was initiated against the said Rajaiah. The Enquiry Officer found him guilty of misconduct namely continuous absent to the duties and found that Rajaiah was unable to maintain minimum required musters. The findings of enquiry officer were accepted by the Respondent/SCCL and a show cause notice was served on him. His explanation was not accepted by the respondent and ultimately the respondent has removed Rajaiah from service. The petitioners did not dispute the I.D filed by the said Rajaiah. There is no dispute by the petitioners about the dismissal of I.D.

15. The petitioners without disclosing all these details filed the present petition and sought for employment of petitioners in the place of Rajaiah. It amounts to suppression of material information. When once the I.D filed by Rajaiah was dismissed by competent court, the only remedy available to the Legal Representative of the said deceased Employee was to file appeal before the Hon'ble High Court. There is a Judgment and decree against Rajaiah and there is no appeal preferred against the Judgment of this tribunal.

16. The petitioners did not explain how they can file fresh I.D on the same cause of action, when the Industrial Dispute raised by the employee/work was dismissed by competent court, more particularly when the I.D was dismissed on merits. As rightly argued by the respondent, the petitioners in the capacity of Legal Representative of deceased employee can prefer appeal against the Judgment and award passed in the above said I.D.

17. The record clearly shows that the respondent served a charge sheet on Rajaiah and after enquiry, he was removed from service on the ground of continuous absence to the duty. It is also clear that the said Rajaiah was filed I.D. No. 19/2005 and challenged the said order. But I.D was dismissed on merits.

18. Now it is very clear that the petitioners without approaching the Hon'ble High Court on the Award in I.D.No.19/2005, filed the present I.D and wanted to get an order of employment. The award in I.D.No.19/2005 operates at res-judicata. In fact the petitioners are not able to explain how and under what provision they can claim employment. This was not a case of voluntary retirement. Therefore there are no merits and present I.D is liable to be dismissed.

19. In the result, the petition is dismissed.

Dictated to Typist, transcribed by him, corrected and pronounced by me in the open court, on this the 8th day of February, 2018.

SAMBASIVA RAO NAIDU, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN

-Nil-

FOR MANAGEMENT

-Nil-

EXHIBITS**FOR WORKMAN:—**

Ex.W-1	Dt.	16-02-2010	Demand letter
Ex.W-2	Dt.	12-08-2004	Charge sheet
Ex.W-3	Dt.	04-07-2004	Show cause notice
Ex.W-4	Dt.	04-09-2008	Death certificate
Ex.W-5	Dt.	-	Enquiry proceedings
Ex.W-6	Dt.	11-03-2011	Family members certificate

FOR MANAGEMENT:-

Ex.M-1	Dt.	09-03-2005	Notice and petition in ID.No.19/2005 filed by K.Rajaiah (Petitioners husband)
Ex.M-2	Dt.	27-06-2006	Copy of counter in ID.No.19/2005
Ex.M-3	Dt.	30-06-2005	Copy of circular No.CRP/Per/IR/V/621/967 for voluntary retirement scheme in company
Ex.M-4	Dt.	01-08-2007	Notification with award in ID.No.19/2005

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, गोदावरिखानी के पंचाट (संदर्भ संख्या 74/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.07.2018 को प्राप्त हुआ था।

[सं. एल-22013/01/2018-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 30.07.2018.

[No. L-22013/01/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI
ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI****Present:** SRI SAMBASIVA RAO NAIDU, Chairman-cum-Presiding Officer,ON WEDNESDAY, THE 7th DAY OF FEBRUARY, 2018**INDUSTRIAL DISPUTE No. 74 OF 2015****Between:—**

Vengala Srinivas, S/o. Late Kanakaiah, 37 years, E.C.No. 2364793,
Ex-General Mazdoor, R/o. H.No.20-4-310, Hanuman Nagar,
P.O: Godavarikhani, District: Karimnagar

...Petitioner

AND

1. The Superintendent of Mines, Singareni Collieries Company Ltd.,
GDK No. 11 Incline, RG-I Area, PO: Godavarikhani, District: Karimnagar.
2. The General Manager, Singareni Collieries Company Ltd.,
Ramagundam Area-I, PO: Godavarikhani, District: Karimnagar.
3. The Chairman & Managing Director, Singareni Collieries Company Ltd.,
P.O: Kothagudem, District: Khammam (A.P).

...Respondents

This case coming before me for final hearing in the presence of Sri Gulla Ramesh, Advocate for the Petitioner and of Sri D.Krishna Murthy, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:—

AWARD

1. This is a petition filed by the petitioner U/Sec.2-A (2) of Industrial Disputes Act, 1947 which hereinafter will be referred as I.D Act against R-1 to R-3 with a prayer to set aside the dismissal order No.RG-I/PER/S/46/1722 dated 16/19-03-2013 by second respondent herein and also to direct the respondents' to reinstate the petitioner into service with all consequential attendant benefits and full back-wages. The following is the brief case of the petitioner as per his petition.

2. The petitioner was appointed as Badli-Filler in the respondents' company during 1999 under the dependent employment scheme. He was promoted as General Mazdoor. Ever since the date of his appointment he was discharging the duties to the utmost satisfaction of his superiors, without any kind of adverse remarks. The petitioner further represented that he served the company effectively and put more than required musters. The petitioner has furnished a tabular form of his attendance particulars from 1999-2011 and claimed that he has attended more than 100 musters. The petitioner further stated that he suffered chronic ill-health and severe pain and injuries to his right ankle in 2010. He underwent prolong medical treatment in the respondents' company hospitals and other referral hospitals at regular intervals. The petitioner claims that his health was badly affected due to underground work. According to the petitioner due to the indifferent attitude of the respondents and because of chronic ill-health, he was forced to work in the underground to feed his large family. He used to obtain treatment, but his health was completely deteriorated during 2011-2012. The respondents without considering these aspects have issued charge sheet dated 17-03-2012 with the following.

"25 (25): Habitual late attendance or habitual absence from duty without sufficient cause".

"25 (31): Absence from duty without sanctioned leave or sufficient cause or overstayed beyond sanctioned leave".

3. The petitioner further claimed that there was no deliberate or intentional absence on his part and there was reasonable and sufficient cause for his continuous absence for his duties and for failure to maintain minimum musters. But the second respondent passed an illegal order on 16/19-03-2013 and dismissed the petitioner from service. The petitioner states that an ex-parte domestic enquiry was conducted while the petitioner was undergoing treatment. There was no opportunity for petitioner to defend his case. The enquiry officer did not appreciate the documentary and oral evidence in a proper way. The findings of the enquiry officer are cryptic and he gave vague findings, which are biased and perverse. Therefore the petitioner prayed to treat the domestic enquiry as invalid. He has also claimed that the second respondent passed dismissal order without issuing prior show cause notice but imposed capital punishment of

dismissal from service. It is mandatory for the respondent to issue show cause notice to the petitioner before imposing capital punishment. The petitioner further averred that in view of the health condition he was unable to attend duties. He used to maintain more than 150 musters in several years prior to 2006. Therefore according to the petitioner his absence in 2012 cannot be treated as misconduct. The respondent adopted unfair labour practice and imposed harsh punishment which amounts to economic death of the petitioner. He could not secure any other employment after his dismissal from the service. He has no other source of livelihood thereby he prayed for set aside the dismissal order and to direct the respondents to reinstate the petitioner into service with all consequential benefits and back-wages.

4. The respondents have appeared before the court. R-2 filed a detailed counter which is adopted by R-1 and R-3. The respondents have claimed that all the material averments of the petitioner are false and the respondents have denied those allegations. According to these respondents it is incorrect to say that the petitioner discharged duties to the utmost satisfaction of the superiors. The petitioner was never regular to the duties. He was a chronic absentee. In 2012 there was a punishment imposed on the petitioner and his two increments were stopped for his continues absence from duties. The respondents have claimed that the services of the employees of respondent company are governed by company standing orders. According to Section 52(2) of the Mines Act, 1952 an underground employee is required to put in minimum 190 musters and surface employees must attend 240 musters in a year. The petitioner being an underground employee, he is expected to put in minimum 190 musters in a calendar year. But in 2011 the petitioner put only 6 musters therefore he was charge sheeted under clause 25.25 and 25.31 of companies standing orders. The respondents have alleged that the petitioner attended 184 musters in 2009 and 62 musters in 2010 and only 6 musters in 2011. While denying and disputing the claim of petitioner with regard to the ill-health these respondents further pleaded that there was no such ill health and the petitioner was put to strict proof of his allegations. The respondent further pleaded that even in 2010 he has attended 62 musters there was a charge sheet against the petitioner and his two increments were with hold by order dated 07-03-2012. Even then there was no improvement in the attendance and petitioner continued the same attitude. The respondent denied the contention of petitioner that only an ex parte domestic enquiry was conducted and further pleaded that the respondent company has established dispensary hospitals throughout the colliery areas as a welfare measure to cater the needs of the employees. The respondent used to refer critical cases to Multi Specialty/Super Specialty Hospitals at Hyderabad. If really petitioner suffered such ill-health he should have reported in the company hospital. He never attended the hospital established by the respondent company. He used to remain absent from duty without intimation or leave.

5. The respondent further pleaded that the petitioner having received charge sheet dated 17-03-2012 did not choose to give any reply. A domestic enquiry was ordered and petitioner was directed to appear for enquiry on 30-10-2012. The notice was served on petitioner on 11-10-2012. He did not choose to attend the enquiry, there was no information from the petitioner as to why he was not able to attend the enquiry therefore the respondent with a view to give another opportunity once again issued notice on 05-12-2012 adjourning the enquiry to 31-12-2012. The notice was returned undelivered. Therefore a paper publication dated 12-01-2013 was issued directing the petitioner to attend the enquiry on 19-01-2013. But there was no response therefore the enquiry officer preceded with the enquiry and on considering documentary evidence and other evidence on record the enquiry officer submitted his report dated 20-01-2013 holding that the petitioner was guilty of misconduct. A show cause notice was issued by way of registered post with acknowledgement due. The petitioner received the said notice but failed to make any representation. Therefore the respondent after considering the entire material including the past record of the petitioner found no circumstances for taking a lenient view and therefore dismissed the petitioner from service.

6. The respondent have denied all the averments of the petitioner vide Para No. 7,8,9 and further pleaded that they have followed the procedure. They have issued notice of enquiry as well as a show cause notice directing the petitioner to make any representation. The respondents also pleaded that there are 60,000 employees in the respondent company. The figure includes workmen, executives and supervisors. The production results will depend upon the overall attendance and performance of each and every individual. The duties of the employees are interlinked and inseparable. If any employee is absent without any sanction of leave or without any justified cause the work to be performed get affected. Such unauthorized absence create sudden void, which at times is very difficult to fill up, and there will be no proper planning and the planned schedules suddenly disturbed if there is no prior notice. Therefore the respondent company was compelled to take severe action against the unauthorized absentees. The respondents have claimed that the petitioner was an unauthorized absentee with this 6 musters in a calendar year. He failed to improve his attendance and performance even after punishments of with holding his increments. With advent and implementation of new Industrial and Economic Policies by Central Government as well as Company the respondent cannot go on employing the persons who are chronic absentees, who are burden to the company therefore the respondent was constrained to dismiss the petitioner from service. The respondent prayed for dismissal of the present industrial dispute.

7. When the petition was pending for enquiry the petitioner filed a memo under section 11-A of I.D Act and reported no objection against the domestic enquiry. Both the counsel for petitioner and respondents' gave consent for marking Exhibits. Ex.W-1 to W-9 are marked by the petitioner and Exhibits M-1 to M-13 were marked for respondents.

8. Both the parties filed their respective written arguments.

Now the point for consideration is whether the petitioner is entitle to reinstatement into service by set aside the dismissal order, if so whether the petitioner is entitled to attendant benefits and back-wages?

9. As seen from the entire records the petitioner was appointed as Badli Filler under dependent employment scheme. It seems he joined service in 1999. The petitioner did not dispute the rule of the company by which an underground employee is suppose to put in minimum 190 musters. The respondents have pleaded that according to Section 52(2) of Mines Act every underground employee is required to attend 190 musters in a calendar year. The services of the petitioner are governed by Mines Act, 1952. Even according to tabular form in Page No. 3 of the petition except in 2003, 2008, and 2009 the petitioner did not attend 190 musters in the remaining period. His attendance in 1999 was 88 musters and in 2001 it is 140, in 2002 it was 80, in 2005 his attendance was 142 musters, in 2006 it was 108 where as in 2010 his attendance was 62 musters thereby an enquiry was conducted and his increments were with held. The attendance of the petitioner in 2011 was 6 only musters. The respondents have categorically stated that when the petitioner failed to attend minimum musters he was charge sheeted in 2010 and after enquiry his two increments were with held, but there was no change in the attitude and the attendance of petitioner in 2011 was only 6 musters. The petitioner having accepted these figures pleaded that he was suffering from chronic ill health and was unable to attend duties. The respondent claims that they have established company hospitals in all the colliery areas and they used to refer critical cases to the Multi Specialty/Super Specialty Hospitals at Hyderabad. In order to substantiate the claim with regard to the ill health the petitioner has produced some medical record but it is very clear that he never attended the hospitals established by the respondent company. Ex.W-4 is the outpatient card from Chalmers Anand Rao Institute of Medical Sciences dated 09-04-2011. According to this outpatient card the complaint was pain in the right ankle. Ex.W-5 is a report from Diagnostic Lab for MRI Scan Right Knee Joint. Ex.W-6 is the certificate obtained from Leela Ramesh Multi Specialty and Critical Care Hospital without any date. In fact there are no details in this document. Ex.W-7 to W-9 are the OP tickets from SCCL Hospital. The petitioner is not able to prove that he suffered such a chronic disease by which he was unable to attend the duties. Except this certificate which at best shows that he suffered Knee pain, there is no proof that he was undergoing treatment for any chronic disease. There is no explanation from the petitioner why he did not opt to join in the company hospital or to visit Multi Super Specialty hospitals through the employer. The petitioner did not choose to examine the concerned doctors from whom he said to have obtained treatment.

10. On the other hand the respondent has produced record which shows once the petitioner faced regular enquiry for his absence and in the year 2010 his increment was with hold as a measure of punishment. In the light of the said record the petitioner ought to have improved his attendance but the records shows that in a long year of 365 days he attended the work for only 6 musters. In fact there is no sufficient documentary proof that petitioner was prevented from attending the duties. As rightly argued by the respondents if really the petitioner suffered such a severe health problem he could have approached the hospital authorities and he must have obtained sick permission. There is a practice in the respondent company whenever an employee is unable to attend the duties he used to be referred to the company hospital where the authorities will declare him as unfit and render treatment. The petitioner did not explain why he was not able to attend the hospital if really knee pain was such severe. It is a fact that the respondent company is depending on the services of the staff including underground employees. As rightly claimed by the respondent if a particular employee failed to attend the duties without any prior permission definitely it cause dislocation of the work. The present case is not an expectation. The learned counsel for the respondent relied on a Judgment of the Honorable Apex Court in Civil Appeal No. 1941 of 2014 between Chennai Metropolitan Water Supply and Sewerage Board and others Vs T.T. Murali Babu. The Honorable Apex Court was pleased to observe in this judgment that the plea of absence of "habitual absenteeism" is absolutely unacceptable and under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.

11. The next contention of the petitioner is with regard to procedure lapses the petitioner claims that there was no proper enquiry he was not served with any show cause notice and he was dismissed against the principles of natural justice but the records produced by the respondent clearly shows that the petitioner was informed about the proposed enquiry he has received the notice and failed to attend the enquiry. There was a paper publication in the newspaper directing the petitioner to attend the enquiry. The respondents have issued a show cause notice but petitioner did not choose to give any reply. The enquiry officer has examined the oral and documentary record and submitted his report under Ex.M-11. Ex.M-12 is the copy of show cause notice which was sent to petitioner by registered post and the same was served on the petitioner therefore the contention of the petitioner that there was no proper services of enquiry notice and there was no show cause notice is nothing but false. The petitioner in spite of punishment of withholding increments in 2010 again failed to put in required musters in 2011, there was no proper explanation for his absence. He could not prove that he was suffering from such a severe health problems. Therefore the punishment of dismissal from service is not shockingly disproportionate to the misconduct as such there are no grounds to allow the petitioner or to direct the respondent company to reinstate the petitioner into service. Therefore the petitioner is liable to be dismissed.

12. In the result, the petition is dismissed.

Dictated to Typist, transcribed by him, corrected and pronounced by me in the open court, on this the 7th day of February, 2018.

SAMBASIVA RAO NAIDU, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN

-Nil-

FOR MANAGEMENT

-Nil-

EXHIBITS

FOR WORKMAN:—

Ex.W-1	Dt.	16/19-3-2015	Dismissal order
Ex.W-2	Dt.	-	Identity card (photocopy)
Ex.W-3	Dt.	21-08-2015	Office copy of demand letter with RP receipt and postal acknowledgement
Ex.W-4	Dt.	09-04-2011	Out patient card (photocopy)
Ex.W-5	Dt.	12-04-2011	MRI Scan report
Ex.W-6	Dt.	-	Post Traumatic RA report
Ex.W-7	Dt.	27-02-2011	SCCL hospital OP ticket (photocopy)
Ex.W-8	Dt.	25-03-2011 & 04-05-2011	SCCL hospital OP ticket (photocopy)
Ex.W-9	Dt.	02-06-2011	SCCL hospital OP ticket (photocopy)

FOR MANAGEMENT:-

Ex.M-1	Dt.	07-03-2012	Office order
Ex.M-2	Dt.	17-03-2012	Charge sheet
Ex.M-3	Dt.	03-08-2012	Receipt
Ex.M-4	Dt.	08-10-2012	Enquiry notice
Ex.M-5	Dt.	03-11-2012	Letter addressed to the post master, Godavarikhani
Ex.M-6	Dt.	-	Delivery slip of registration department (Xerox)
Ex.M-7	Dt.	05-12-2012	Enquiry notice
Ex.M-8	Dt.	05-12-2012	Returned RPAD sent to the petitioner
Ex.M-9	Dt.	12-01-2013	Paper publication of Namaste Telangana
Ex.M-10	Dt.	19-01-2013	Enquiry proceedings
Ex.M-11	Dt.	20-01-2013	Enquiry report
Ex.M-12	Dt.	16-02-2013	Show cause notice
Ex.M-13	Dt.	16/18-03-2013	Office order, dismissing the petitioner

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1236.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 04/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2018 को प्राप्त हुआ था।

[सं. एल-22012/138/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 07.08.2018.

[No. L-22012/138/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/04/2017-18**

Date: 03.07.2018

- Party No. 1(a)** : The Sub Area Manager,
Mungoli Sub Area, Western Coalfields Limited,
Post-Sakhraa, Tal-Wani, Distt-Yavatmal,
Yavatmal (M.S.) – 445304.
- Party No. 1(b)** : M/s Avaneesh Logistics Pvt. Ltd.,
WCL contractor, At Shengaon,
Ghughus Road, Post-Ghughus,
Distt. Chandrapur,
Chandrapur (M.S.) – 442505.

Versus

- Party No. 2** : Shri Uttam Laxman Dethe & 27 others,
Shrirama Ward, Ghughus,
Distt. Chandrapur,
Chandrapur (M.S.) – 442505.

AWARD(Dated: 03rd July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employer, in relation to the management of Western Coalfields) Limited and the Contractor, M/s Avaneesh Logistics Pvt. Ltd. and their workmen, Shri Uttam Laxman Dethe & 27 others for adjudication, as per letter **No.L-22012/138/2016- IR(CM-II) dated 09.05.2017**, with the following schedule:-

"Whether the action of the management of WCL, Chandrapur was not giving regular duties of Shri Uttam Laxman Dethe and other 27 workmen (as per Annexure) engaged through the Contractor M/s Avaneesh Logistics Pvt. Ltd., Chandrapur is legal and justified? If not, to what relief the workmen are entitled to and to what extent?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 31.08.2017, Shri Amores Bajpayee, authorized representative of the Contractor filed authorization but no advocate filed any vakalatnama on behalf of them. On 27.10.2017, Shri R.E. Moharair, advocate filed vakalatnama for the management. Of WCL On the first date after issuing of notice by this Tribunal i.e. on 31.08.2017, the petitioner, Uttam Dethe was present but no statement of claim was filed on that date and

from that day, nobody has been appearing from the side of the petitioners. It shows that, the petitioners are not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू. सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 20/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2018 को प्राप्त हुआ था।

[सं. एल-22012/29/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 07.08.2018.

[No. L-22012/29/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/20/2017-18

Date: 06.07.2018

Party No. 1(a) : The General Manager,
Western Coalfields Limited,
Majri Area, Post: Kuchna,
Tehsil : Bhadrawati, Chandrapur,
Chandrapur (M.S.).

Party No.1(b) : M/s Shri Kuldeep Singh, Contractor
At WCL, Majri, Post: Kuchna,
Tehsil : Bhadrawati, Dist. Chandrapur,
Chandrapur (M.S.).

Versus

Party No.2 : Shri Vijay Munnalil Kumhar & 2 others,
Ward No. 4, New Majri Colliery,
Post: Shivajinagar, Tehsil: Bhadrawati,
Distt. Chandrapur, Chandrapur (M.S.).

AWARD

(Dated: 06th July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employer, in relation to the management of Western Coalfields Limited & M/s Kuldeep Singh, Contractor and their workmen, Shri Vijay Munnalil Kumhar & 2 others for adjudication, as per letter **No.L-22012/29/2017- IR(CM-II) dated 26.09.2017**, with the following schedule:-

“Whether the action of the management of M/s Kuldeep Singh, a contractor of WCL, New Majri Sub Area, Chandrapur in terminating the services of Shri Vijay Munnalil Kumhar and 2 others workman

(list of workmen enclosed) without complying the provision section 25 F of ID Act 1947 is legal & justified? If not, what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 28.11.2017, Shri R.E. Moharir, advocate filed vakalatnama on behalf of the Respondent No. 1 and Shri Aktar N. Ansari, advocate, on behalf of the Respondent No. 2. On 23.01.2018, 20.03.2018 and up to 23.04.2018, the petitioner did not engage any advocate. On 24.04.2018, petitioner's advocate filed vakalatnama and prayed for time to file statement of claim. Dates 09.05.2018, and 02.07.2018 were fixed for filing of statement of claim on the request of the petitioner. Moreover, this court already closed this case on 24.04.2018. Even on 02.07.2018, petitioner and his advocate were not present. It shows that, the petitioner is not interested to continue the reference. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1238.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू. सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 32/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2018 को प्राप्त हुआ था।

[सं. एल-22012/95/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 07.08.2018.

[No. L-22012/95/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/32/2017-18

Date: 23.07.2018

Party No.1 : The Sub Area Manager,
Hindustan Lalpeth Colliery No. 1,
Western Coalfield Ltd., Post: Lalpeth,
Distt. Chandrapur,
Chandrapur (M.S.).

Versus

Party No.2 : The General Secretary,
Koyla Shramik Sabha (HMS),
C/o Shri C.J. Kandre,
Near Mahakali Mandir, Bhiwapur,
Distt. Chandrapur, Chandrapur (M.S.).

AWARD

(Dated: 23rd July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employer, in relation to the management of Western Coalfields Limited and their union, Koyla

Shramik Sabha (HMS), for adjudication, as per letter No.L-22012/95/2017- IR(CM-II) dated 11.12.2017, with the following schedule:-

“Whether the dispute raised by General Secretary of Koyala Shramik Sabha (HMS), Chandrapur over the demand of pay arrears during conversion from PR to TR i.r.o. Shri Vitthal Krishna Thamke, PR Loader, Hindustan Lalpeth Sub Area, WCLtd, Chandrapur is just, fair & legal? If yes, to what relief the concerned workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 02.07.2018, petitioner/workman filed an application to withdraw/close the proceedings of this case. This application was marked as I.A. No. 1. On behalf of the management, Shri Vinod M. Shende asserted “No Objection” and also identified the workman. So, this application appears to be bonafide. This reference is closed without recording any evidence and treated as closed with unproved. Hence, it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 85/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2018 को प्राप्त हुआ था।

[सं. एल-22012/218/1997-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 07.08.2018.

[No. L-22012/218/1997-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/85/2002

Date: 23.07.2018

Party No. 1 : The Sub Area Manager,
WCL, Ballarpur Colliery,
PO: Ballarpur, Distt. Chandrapur,
Ballarpur.

Versus

Party No. 2 : The General Secretary,
Indira Rashtriya KKK Sangh,
WCL, Near Meenakshi Mandir,
Chandrapur, Chandrapur (M.S.).

AWARD

(Dated: 23rd July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Indira

Rashtriya KKK Sangh, for adjudication, as per letter No.L-22012/218/97-IR (CM-II) dated 22.07.1998, with the following schedule:-

“Whether the action of the management of General Manager, M/s WCL Ballarpur Area in not regularizing all 15 workmen only on the ground that these workers are not members of recognized union like other workers who worked for few days and were regularized by way of making settlement with the recognized union, is legal, proper and justified? If not, to what relief the workmen are entitled and from which date? What other directions are necessary in the matter?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, Indira Rashtriya KKK Sangh, (“the union” in short) filed the statement of claim and the management of Western Coalfields Limited, (“Party no.1” in short) filed the written statement.
3. The union filed a statement a claim by asserting that, they registered under Trade Union Act. They also asserted that, concerned workers involved in the present dispute along with others lodged several agitations after stoppage of their work. A settlement was taken out between the union and management by which management agreed to prepare a seniority list of all such workers and also agreed that, whenever any vacancy will available, preference shall be given to the employee from the seniority list.
4. According to the union, this reference is concerned with about 15 workmen. Name of these 15 workers are mentioned in para 7 of the statement of claim. According to the union, all 15 workers were employed at Ballarpur Colliery between 1976 to 1979 as Wagon Loader and they are entitled to be reemployment as and when the vacancy will available, but the Party No. 1 did not regularize above workers and breached the agreement dated 30.03.1980. The Party No. 1 also did not prepare a waiting list of all terminated employees. Moreover, Party No. 1 in 1989, invited name of the candidates from Employment Exchange, but did not follow the requisite procedure. So, they breached the provision of Section 25 of the above Act.
5. According to the union, agreement dated 30.03.1980 had mentioned that, as per provisions of Section 25-H and the provisions of Standing Orders, Party No. 1 considered 157 workers, but they present workers were not reemployed and Party No. 1 did not take any step to treat employment of above workers. So they prayed that, above 15 Wagon Loaders may be reemployed with retrospective effect and pay them back wages with consequential relief.
6. On behalf of the Party No. 1, filed written statement by taking preliminary objection that, order of reference mentioned 11 workmen while statement of claim filed on behalf of 15 workers. Term of reference is contrary to real dispute, so this is vague. They also asserted that, this claim did not call under section 10 of the above act, so it is illegal and bad in law. They also asserted that, this reference was made after lapses of several years i.e. 19 years, so it is not tenable under the eye of law.
7. According to the Party No. 1, this reference is totally misconceived, because the union was not in existence during the period of claimants alleged to have worked, so union has no locus standi. According to the Party No. 1, WCL is a statutory body, which has their own rules and regulations. There is also prescribed procedure for getting appointment. They appoint only those eligible candidates, whose names are sponsored by the Employment Exchange. It is also mandatory for Party No. 1 to comply reservation criteria, physical handicapped and ex-serviceman criteria, which are prescribed by the Government.
8. According to the Party No. 1, persons who are engaged purely on temporary basis as a stop gap arrangement would not get the right to appointment permanently. Payment of Wages (Mines) Rules 1956 is applicable to the management and under rule 6 of above rules, a register is maintained, which is preserved for a period of three years. According to the Party No. 1, there is no employer and employee relation exists, so backdoor entry cannot be permitted to be regularized.
9. Party No. 1 asserted that, this dispute was originally refereed to CGIT, Jabalpur and then it was transferred to this Tribunal. Management also issued requisition to the local Employment Exchange for sponsoring the eligible candidate sand on the basis of that sponsored name, candidates were selected. According to the Party No. 1, no meeting was held on 30.03.1980. Claimants were not employed; therefore the question of reemployment does not arise. According to the Party No. 1, there is no violation of above Act and Standing Orders. So, they prayed that, claimants through union are not entitled to any relief and also prayed for dismissal of the reference.
10. The union filed rejoinder by asserting all facts mentioned in the statement of claim. They also asserted that, preliminary objection taken by the Party No. 1 to be quashed, because they are frivolous objection. They also prayed that, judgment of the Hon’ble Supreme Court in Umadevi’s case is not applicable. They also admitted para 3 and 4 of written statement. They also prayed that, Party No. 1 is not specifically denied to their averment, so they prayed for reinstatement.

11. Points of determination

- i. Whether the management refused to regularize the above workers on the ground that, they were not members of recognized union?
- ii. Whether the action of the management not regularizing all 15 claimants is legal, proper and justified?
- iii. Whether the workmen are entitled to any relief?

Reasons of determination

12. On behalf of workman Mr. K.K. Yadav relied on following case laws:- S.P. Chengalvarya Naidu Vs. Jagannath AIR 1994 SC 853, UP State Electricity Board Vs. Pooranchand Pandey 2008 II CLR-147, MSRTC Vs. Casteribe Rajya P. Karmachari Sangh 2009III CLR 262, Anoop Sharma Vs. Executive Engineer, Public Health Division 2010 II CLR 1, Ramesh Chander Vs. State of Haryana 2009 LAB IC 631, National Engineering Industries Ltd., Vs. State of Rajasthan AIR 2000 Supreme Court 469 and Sapan Kumar Pandit Vs. UP State Electricity Board 2001 AIR SCW 2685 in which following principles were laid down:-

- 1) If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.
- 2) Court ought to draw an adverse inference against him Onus of proof does not lie on him.
- 3) Their request of regularisation That ground of discrimination between two sets of employees made out.
- 4) It is held that unrecognized union which filed complaints in Industrial Court at Bombay was not competent to file complaints of unfair labour practice.
- 5) The employer should make tangible offer to pay amount of wages and compensation to the workman before he is asked to go.
- 6) Preference in reappointment should have been given in such daily wager by sending intimation in writing as and when vacancy occurred – No opportunity given to the retrenched daily wager while appointing other person.
- 7) Writ petition assailing it on ground of absence of Industrial dispute is maintainable.
- 8) Fact showing that conciliation proceeding was not concluded on date of making reference – Thus dispute exist on that day.

13. On behalf of the management MR. A.K. Sashidharan relied on following case laws:- Surendra Nagar Distt. Panchayat Vs. Dhayabai Amar Singh (2005) 8 SCC 750, Oshiar Prasad Vs. Employers, 2015 I LLJ SC 513, Regional Manager SBI Vs. Rakesh Kumar Tiwari (2006) I SCC 530, Prem Singh vs. PO Labour Court WP No. 4093/96 High Court Delhi, Mohanlal Vs. Management of Bharat Electronic Ltd. AIR 1981 AC1253, Bhav Nagar Municipal corporation Vs. Salim Bhai Umar Bhai Mansuri 2013 III LLJ 545, State of Rajasthan Vs. Surjeet Singh 2007 I LLJ 236 (SC), Rambabu Vs. DRM SE Railways CGIT Jabalpur R/248/97 and Post master General Kolkata Vs. Tatu Das 2007 5 SCC 317 in which following principles were laid down:-

- i) Under Section 25-F and 25-B requirement of 240 days – held burden of proof lie on workman.
- ii) Appellant's services discontinued or retrenched long back, question of absorption or regularisation does not arise..... right to claim parity with claim of others.
- iii) Respondent workmen's appointment being totally having been made without following procedure in law.....
- iv) Labour court could not automatically grant his reinstatement in service.
- v) Where retrenchment has been affected without complying with the provisions section 25-F of ID Act but would be relevant for regularisation of service..... But it cannot invoked where any illegality has been committed or where no legal right is established.
- vi) The respondent was careful enough not to disclose his address at any stage of proceeding before labour court..... Hence he is not entitled to any relief.
- vii) No ground has been given as to delay in taking steps to get their grievance redressed. The delay cannot be condoned without sufficient and bonafide grounds are established by the claimant.

14. Now we will see the legal position. B.C. Ramkrishna Vs. State 2003 LIC 1014 (Karnataka), Dr. Mrs. Chanchal Goyal Vs. State of Raj 2003 LIC 1141 (SC), Ashiwani Kumar vs. State of Bihar 1997 LIC 578 (SC), M.P. State Agro Vs. S.C. Pande 2006 SCC(L&S) 434, Delhi Development Vs. Delhi Administration 1992 SCC(L&S) 805, Secretary State of

Karnataka Vs. Umadevi 2006 SCC(L7S) 753, State of Karnataka Vs. G.V. Chandrashekhhar 2009 I SCC(L&S) 834, Vice chancellor Lucknow Vs. Akhilesh Kumar 2016 I SCC(L&S) 186 and Talwara Cooperative Vs. Sushil Kumar 2008 2 SCC(L&S) 931, in which, following principles are laid down:-

- i. Held, "The challenge to the order of dismissal passed against the petitioner on the ground of long continuance as ad hoc/temporary employee would not be tenablemere continuance does not imply such waiver.....no waiver which would be against requisite compliances can be countenanced".
- ii. Held, "Right to regularisation, if any, on completion of 240 days' continuous service.....by itself would not confer any legal right upon him to be regularized in service".
- iii. "Absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited dehors the constitutional scheme of public directions amount to creating another mode of public appointment, which is not permissible"
- iv. It is also held that, in para 54 in the case of 2006 SCC(L&S) 753, it is also held that, "Those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents".
- v. Ad hoc appointments continuing for a long time, reiterated, cannot be ordered to be regularized.
- vi. Daily wage, considering that, respondent was out of employment for more than 20 years and could not seek regular appointment elsewhere due to over age, compensation of 4 lacs is directed to pay to each respondent.

I relied all principles laid down in the above case laws. Now, I want to discuss factual argument of the workman first.

15. On behalf of the workman, it was argued that, Chandrapur Area was comprising Ballarpur Area, which was separated on 01.07.1987. They also argued that, present 15 workers were employed by the Party No. 1 as Wagon Loader from 1976 to 1979. This fact was tried to be proved by the union by examining Shri. U.P. Verma, PW-1, Shri. Yashpal Singh, PW-2 and Shri. Rammurat Yadav, PW-3. Except Yashpal Singh, other witness of union are union members. They worked in different mines, but on behalf of the Party No. 1, Shri Pramod Jagirdar was examined, who was working at Ballarpur Area in this duration as a Personnel Officer.

16. PW-1, Shri U.P. Verma asserted that, he was the President of Wardha Valley Colliery Workers' Union (HMS) from 1976 to 1997 but Shri Yashpal Singh asserted that, he was working as Wagon Loader in Sasti Sub Area in same duration. According to Shri Rammurat Yadav, PW-3, he worked at Sasti Colliery, but he knows Shri Suresh Sirdar, who is his neighbour. It shows that, they were working in different mines. Now we want to see, the duration of formation of the union.

17. Shri Yashpal asserted that, he became a member of the union in 1980, but according to the union President, Shri U.P. Verma, he was the President of Wardha Valley Colliery Workers' Union up to 1997. According to Shri Rammurat Yadav, this union (Indira Rashtriya Koyla Khadan Kamgar Sangh) came into existence in 1993-94. According to Shri Yashpal, he was never a member of either union except the union in question, but he does not know when the union was registered. He also asserted that, he did not file any document to show that, he became a member of the union in 1980. Ongoing above evidence, it is doubtful when the claimant union came in existence and it is also doubtful that, all 15 workers were the members of this union. In this context, argument of Party No. 1 that, the union was not in existence in 1976 to 1979 appears to be reliable.

18. Shri Yashpal Singh, PW-2 asserted that, all these workers were working in Ballarpur mines in 1976 to 1979 and Shri R.B. Mishra issued certificate for their working. Shri R.B. Mishra was posted at Ballarpur Mines in that duration was proved by Shri U.P. Verma, PW-1 and Shri Rammurat Yadav, PW-3, but Shri Rammurat Yadav in para 55 of his statement, denied the fact that, Shri R.B. Mishra, Personnel Officer of Sasti Colliery issued any certificate of any workman. According to Shri U.P. Verma and Shri Yashpal Singh, they were not certain about the duration of posting of Shri R.B. Mishra. Now we see the evidence of Party No. 1 on this point.

19. Shri Pramod Jagirdar, MW-1 asserted that, he was the personnel Manager at Ballarpur Area in 1976 to 1979 and he retired from the post of Chief General Manager (IR) from WCL. In para 11 of his statement, he asserted that, he had never given such type of certificate to any casual worker, but according to him, he did not know what exact procedure was followed at that time regarding casual worker and he does not know whether any such type of certificate was issued to any casual worker. Statement of this witness appears to be true and evidence of Party No. 1 is more reliable than union.

20. On behalf of the union, it was argued that, on 30.03.1980, a settlement was taken place regarding 157 workers u/s 25-H of the above act, but according to the union, no step was taken by the Party No. 1 in regard to above 15 workers. In this point, Shri Rammurat Yadav asserted in his court statement that, RKKKS union had raised the dispute on behalf of

all the Wagon Loaders, who were working in 1976 to 1979, but all workers, whose names are mentioned in para 35 and 36 of examination in chief were regularized by the Party No. 1 as they were working in different capacity in WCL, but according to Shri Pramod Jagirdar, MW-1, these some rules and regulations prevail in WCL for regularizing of wagon loaders. According to him, whose name was sponsored by the local Employment Exchange and had completed 240 days of regular work, may be regularized. Shri Yashpal (para 40 of his court statement) asserted that, his name was never registered in any local Employment Exchange.

21. As per as the settlement is concerned, union proved W-III to W-V as a settlement deed, but according to Shri U.P. Verma in para 53 of his court statement admitted that, this settlement was not in regard to regularization of wagon loaders. He also admitted that, this settlement was not with the above union. He did not sign the said settlement on behalf of the union. According to Shri Yashpal, in para 40 in his court statement, he had no idea about the settlement mentioned in para 15 in evidence on affidavit. He also asserted that, he did not mention in his evidence on affidavit, that he was employed by the contractor.

On going the above discussion, in my opinion, union failed to prove that, there was any settlement on 30.03.1980 about regularization of 157 wagon loaders.

22. On behalf of the Party No. 1 that, it was argued that, this reference was made after 19 years of delay. They also argued that, there was no dispute between the union and Party No. 1 u/s 10 of above act. They also argued that, there is no locus standi of above union to raise this dispute. This fact was denied by the union. After perusal of the records, it appears that, name, address and particulars of 15 workers were not referred by the Ministry. No such letter is found in the record. It also appears that, according to the union, workers were employed in the duration from 1976 to 1979 and settlement was taken on 30.03.1980, but reference by the Ministry on 22.07.1998. It is quite delay and no justification was given on behalf of the union. In my opinion, delay was too long, so it is not justified.

23. According to the union, Party No. 1 did not produce the documents even of order of the court. On the contrary, Party No. 1 denied the fact by asserting that, they maintained register under Payment of Wages (Mines) Rule 1956. This fact is also supported by the Party No. 1's witness, Shri Pramod Jagirdar in para 11 of his court statement. I want to reproduce the concerned para, "Muster Roll is maintained for permanent employee, but in case of casual worker, Form 'C' register and attendance register are maintained".

On perusal of the record, it appears that, this case was referred to this court on 22.07.1998 after 22 years of the real dispute. This court in its order dated 16.11.2012 directed that, "Hence, the management cannot be directed to produce the documentspetitioner is devoid of merit and is rejected". So, there is no question of adverse inference against the Party No. 1.

24. On behalf of the Party No. 1, it was argued that, same nature of this case was decided by this Tribunal on 26.11.2012 and which was confirmed by the Hon'ble High Court in W.P. No. 3205/2014, Wardha Valley Colliery Workers Union Vs. Western Coalfields Limited dated 19.08.2015. They also produced the copy of the award and judgment of the Hon'ble High Court, no objection was raised on behalf of the union. In this case, my predecessor held that, "The demand of WVC Workers Union for reinstatement in services of WCL in respect of 121 Wagon Loaders (List enclosed) is illegal & unjustified. The 121 claimants are not entitled to any relief".

The Hon'ble High Court in above Writ Petition also held that, "The learned advocate for petitionerI see no reason to interfere with the impugned award. The Writ Petition is dismissed".

25. On behalf of the union, it was argued that, corrigendum of the reference issued by the Ministry, in which, all 15 workers names were mentioned. They produced photocopy of the letter dated 25.04.2003, but Party No. 1 denied that fact. The union also did not produce the list of workers, which was referred by the Ministry. After the perusal of the record, list of 15 workers has not been enclosed in official record.

26. Judging the present case in hand with the touch stone of principles as mentioned above, as I observed that, the union failed to prove that, present 15 workers were working as Wagon Loaders in Ballarpur Area from 1976 to 1979. The union also failed to prove that, the above union was registered under Trade Union Act, 1926 at that time and settlement was taken on 30.03.1980 between Party No. 1 and the above union. As per principle laid down in case law, 2000(1) SCC 371, the Tribunal cannot examine the validity of the reference and the Tribunal cannot go beyond the reference. This reference delayed near about 19 years, so original records are not available. Hence, it is ordered:-

ORDER

The action of the management of General Manager, M/s WCL Ballarpur Area in not regularizing all 15 workmen only on the ground that these workers are not members of recognized union like other workers who worked for few days and were regularized by way of making settlement with the recognized union, is legal, proper and justified, because it is not proved. The workmen are not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 8 अगस्त, 2018

का.आ. 1240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 04/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.08.2018 को प्राप्त हुआ था।

[सं. एल-22012/101/2010-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2018

S.O. 1240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 07.08.2018.

[No. L-22012/101/2010-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/04/2011-12**

Date: 26.07.2018

Party No.1 : The Supdt. of Mines/Manager,
WCL Sillewara Mine,
Tq. Saoner, Distt. Nagpur (M.S.),
Nagpur.

Versus

Party No.2 : Shri Dhanraj S/o Ganpat,
Ex. Clipman Tramper,
At & Post Gondegaon,
Teh: Parseoni, Distt. Nagpur (M.S.),
Nagpur.

AWARD(Dated: 26th July, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their workman, Shri Dhanraj S/o Ganpat, for adjudication, as per letter **No.L-22012/101/2010-IR (CM-II) dated 25.03.2011**, with the following Schedule:-

"Whether the action of respondent management in dismissing the services of the applicant is justified and proper? To what relief the applicant workman is entitled to"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, Shri Dhanraj Ganpat, ("the workman" in short) filed the statement of claim and the management of Western Coalfields Limited, ("Party no.1" in short) filed the written statement, but the workman did not file any rejoinder.

3. The workman did not appear since 28.11.2014. Even his advocate gave no objection for engaging another advocate on 09.08.2014. He filed his evidence on affidavit, but he did not appear in court for cross-examination. On the contrary, management filed a pursis on 03.05.2018 to close the case. In this way, workman did not take part in the proceedings, so this court closed his chance to produce evidence on 27.06.2018. This court also found that, no need to pass an order on V.D.E. It also shows that, the workman is not interested to continue this reference. So, in absence of evidence, this case is closed against the workman. Hence it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, रजिस्ट्रार, इलाहाबाद विश्वविद्यालय, इलाहाबाद और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 49/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-42012/18/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 49/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Allahabad University, Allahabad & Others and their workmen, which was received by the Central Government on 13.08.2018.

[No. L-42012/18/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 49 of 2017

Between-

Sri Anurag Mishra son of Virendra Mishra,
Vill. Pure Nanhoo Ka Purwa,
PO Pariyavan,
District Pratapgarh, U.P.

And

1. The Registrar,
Allahabad University,
Allahabad.
2. The Director of M/s Fighting Four Security Service Pvt. Ltd.
FF-59, 88, Khajana Shopping Complex,
Ashiana,
Lucknow.

AWARD

1. Central Government Mol, New Delhi, vide notification no. L-42012/18/2017-IR(DU) dated 06.07.17, has referred the following dispute to this tribunal for adjudication.
2. Whether the workman Anurag Mishra son of Virendra Mishra can be said to be the workman of Allahabad University, 2 And if so whether the termination of services of the workman is legal and justified? 3. If not to what relief the concerned workman is entitled and from which date.
3. After receipt of reference from the Ministry, notice was sent to the worker as well as to the opposite parties but none appeared in the case. Neither any one appeared on behalf of the workman nor workman has filed is claim petition in support of his case, despite providing of repeated opportunities to the worker by this tribunal. It thus appears that the worker is not inclined to prosecute the reference before this tribunal; AR for the management was heard who requested to decide the reference for want of pleadings and evidence therefore, the reference is bound to be answered against the worker for want of pleadings and evidence.
4. Accordingly reference is answered against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, रजिस्ट्रार, इलाहाबाद विश्वविद्यालय, इलाहाबाद और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 48/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-42012/17/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 48/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Allahabad University, Allahabad & Others and their workmen, which was received by the Central Government on 13.08.2018.

[No. L-42012/17/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR**

Industrial Dispute No. 48 of 2017**Between-**

Sri Ram Chandra Dwivedi son of Ram Shanker Dwivedi,
Resident of Vill. Uthagi, PO Balraj Nagar,
District Allahabad.

And

1. The Registrar,
Allahabad University,
Allahabad.
2. The Director of M/s Fighting Four Security Service Pvt. Ltd.
FF-59, 88, Khajana Shopping Complex,
Ashiana,
Lucknow.

AWARD

1. Central Government Mol, New Delhi, vide notification no. L-42012/17/2017-IR(DU) dated 05.07.17, has referred the following dispute to this tribunal for adjudication-
2. Whether the workman Ram Chandra Dwivedi son of Ram Shanker Dwivedi can be said to be the workman of Allahabad University, 2 And if so whether the termination of services of the workman is legal and justified? 3. If not to what relief the concerned workman is entitled and from which date.
3. After receipt of reference from the Ministry, notice was sent to the worker as well as to the opposite parties but none appeared in the case. Neither any one appeared on behalf of the workman nor workman has filed is claim petition in support of his case, despite providing of repeated opportunities to the worker by this tribunal. It thus appears that the worker is not inclined to prosecute the reference before this tribunal; AR for the management was heard who requested to decide the reference for want of pleadings and evidence therefore, the reference is bound to be answered against the worker for want of pleadings and evidence.
4. Accordingly reference is answered against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य महाप्रबंधक, बीएसएनएल, मेरठ और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 101/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.07.2018 को प्राप्त हुआ था।

[सं. एल-40011/06/2010-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 101/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Meerut & Others and their workmen, which was received by the Central Government on 02.07.2018.

[No. L-40011/06/2010-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.

ID No. 101/2012

District Secretary SC/ST Employees Welfare Association
Of BSNL,
Distt. Office Qtr.No249, Alliance Mahanagar Utsav Part II,
Pilibhi Bye Pass,
Bareilly 243006.

...Applicant Union

Versus

1. The Chief General Manager,
BSNL, Western (UP)
Telephone Exchange Building,
Shastri Nagar Meerut (UP).
2. The General Manager, BSNL, Bareilly 243001.
3. The Sub Divisional Engineer, BSNL,
Group Exchange Faridpur,
Bareilly (UP)

...Management

AWARD

In the present case, matter was referred to this Tribunal vide letter No. L-40011/6/2010-IR(DU) dated 04.09.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the demand of the union that Smt. Ashok Lata, Part Time Sweeper working at Faridpur Telephone Exchange of BSNL, Distt. Bareilly be given benefit as per circular dated 20/11/2000 issued by the DGM (Admn.) BSNL Dehradun is just and legal ? If yest, what relief the workman is entitled to ?

2. Both parties were put to notice and the claimant. The applicant Union filed statement of claim on behalf of the workman Smt. Ashok Lata. As per the averments made in the claim petition, Smt. Ashok Lata w/o.Shri Mahesh Chandra, Moh. Uncha P.O. Faridpur, Distt. Bareilly (UP) has been working as part time sweeper w.e.f. 1/10/1992 at Faridpur Telephone Exchange of Management and is called as Pitamberpur Telephone Exchange. Smt. Ashok Lata has been rendering her services continuously and regularly and has been working for more than 240 days in every completed year of service since her appointment w.e.f. 1/10/1992. A circular No.UPT/W.CL./Ruling/96=Estt. Dated 20-11-2000 was

issued by the DGM (Admn.) UP West Telephone circle Dehradun from the office of Chief General Manager, BSNL, Dehradun, whereby directions were issued to all SSA in UP(W) to convert and regularize part time casual workers working more than or less than 4 hours and fulfilling conditions of having worked for more than 240 days in a year preceding 1/8/1998 but adopting unfair labour practice, the Management did not give benefit of the said circular to Smt. Ashok Lata. The workman Smt. Ashok Lata also made representation dated 19/8/2005 before the Management for regularization and full wages but in vain. Hon'ble High Court of Allahabad in W.P.No.67555 of 2005 filed by the workman for regularization of her services and payment of wages, vide order dated 19/8/2005 directed the Management to decide her representation dated 19/8/2005 within stipulated period of 6 weeks. Thereafter the management disposed of the said representation and directed the concerned authorities to make full payment considering her to be part time sweeper but her case for regularization was not considered, on the plea that she was not covered by the guidelines dated 20/11/2000. Though the area involved for cleaning has increased but the workman is being treated as part time sweeper and she was being paid a meager consolidated sum of Rs.2317/- per month which is illegal and unjustified. Hence, the prayer has been made for regularization of services of the workman as full time casual sweeper and she be paid wages/salary as is being paid to Group "D" employees and difference/arrears of salary be paid to her in view of circular/guidelines dated 20/11/2000.

3. The claim petition has been resisted by the Management who filed written statement and took preliminary objections that the claim is absolutely false and vexatious. There exists no cause of action in favour of the workman, as representation dated 19/9/2005 of the claimant was disposed of by the Management, by rejecting her case of regularization. It has been denied the workman has been working continuously and regularly as part time Safai Karamchari (sweeper) in the supervision and control of the Management since her engagement w.e.f. 1/10/1992. It has also been denied that the Smt. Ashok Lata is a workman within Section 2(S) of the Act. It has been alleged that she is working as part time sweeper and perform work on part time basis at any time in the day as per her own choice and normally she completes the cleaning work of that area in a very short period and goes back as no working hours are fixed and as such, she is not a workman. Prayer has been made for rejection of the claim petition.

4. During pendency of the claim petition, the workman/claimant Ashok Lata expired on 27/1/2015 and her legal heirs namely Anil Kumar, Dilip Kumar, Govind and Goipal Babu – her four sons were brought on record vide order dated 30/7/2015.

5. In order to prove the case of the claimant, Shri Mahesh Chandra Jayant who happened to be Assistant General Secretary of the workman Union and also worked in Telephone Department at Bareilly Office as TT Assistant appeared in the witness box as WW1. He tendered his evidence by way of affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/14.

6. On the other hand, the Management in order to rebut the case of the claimant examined Shri Anoop Bajpai, Assistant General Manager as MW1 and he tendered his evidence by way of affidavit Ex.MW1/A alongwith documents Ex.MW1/1 to Ex.MW1/4.

7. Ld. A/R appearing on behalf of the Management strongly contended that claimant Smt. Ashok Lata had not completed 240 days of service in a calendar year and she was just working as part time sweeper and her working hours were not fixed. It was also contended that onus is also upon the claimant to prove that she was in the employment of the Management and has completed more than 240 days in a calendar year.

8. Per contra, learned counsel appearing on behalf of the Claimant submitted that the claimant was under the employment of Management since 1/10/1992 and she had been regularly and continuously working for more than 240 days in each and every year.

9. This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide as to whether the claimant had worked for more than 240 days in a calendar year. In this respect, it is appropriate to refer to the affidavit Ex.WW1/A of Shri Mahesh Chandra Jayant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. The witness of the claimant has been cross examined and in his cross examination also he has clearly stated that late Smt. Ashok Lata worked with the Management for about 25 years and that she had joined the Management in the year 1991. He has also clarified that there was no appointment letter issued to Smt. Ashok Lata. He also categorically denied the suggestion that Ms. Ashok Lata had not worked for 240 days in a calendar year prior to 1/8/1992. He admitted that after decision of the Hon'ble High Court, the representation of the claimant Ashok Lata was considered by the Committee constituted by the Management and had decided that case of Ms. Ashok Lata did not fall within the criteria of regularization. He also admitted that claimant Ashok Lata had not challenged the disposal of her representation dated 4/1/2006 vide order dated 4/1/2006 (Ex.WW1/5).

10. The Management has examined Shri Anoop Bajpai, Asstt. General Manager working in the office of General Manager, BSNL, Bareilly as MW1. He has clearly stated in his affidavit Ex.MW1/A that claimant was never a workman under Section 2(S) of the Act, and that she never completed working for more than 240- days in a year of service since her engagement w.e.f. 1/10/1992 and as such she was not entitled to the benefits of confirmation or regularization as

envisaged in the notification/guidelines dated 20/11/2000 issued by the Management. In cross examination this witness admitted that the claimant was engaged as part time sweeper and her salary was revised from time to time. He also admitted that in the letters Ex.MW1/W-3 & W-4 issued by the Management, basic pay of the claimant Ashok Lata was fixed at Rs.2550/- as on 1.6.1996. This witness could not say whether the claimant was working for half day, though working hours of regular employees fixed at 8 hours. He could not admit or deny that the claimant was working for more than four hours and as such, she was being paid half of the basic wages + DA etc. However, to his mind, there was no break in service of the claimant. He admitted that arrears from 1/1/1006 to 31/12/1999 was paid to the claimant for entire period. He also admitted that salary of the claimant was enhanced after 2001. As per site plan Ex.WW1/14, the area of the telephone exchange stood increased manifold that that work of the claimant also increased.

11. From the evidence adduced on record by the parties it is manifest that the claimant was admittedly engaged by the Management as sweeper though on part time basis and that her salary/wages used to be revised from time to time and that is why arrears from 1/1/1996 to 31/12/1999 were paid to her by the Management. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of her employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

12. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the admittedly the Management had engaged the claimant for the post of sweeper on 1-10-1992 though no letter of appointment was issued to her and her salary/wages used to be revised from time to time and even arrears have been paid to her for the period from 1/1/1996 to 31/12/1999, meaning thereby that she was continuously in the employment of the Management. This proves the relationship of employee and employer between the claimant and the Management. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year. Since in the case in hand, it stands clearly proved from the pleadings and evidence on record, especially the admission made by MW1 Anoop Bajpai in his cross examination that to his mind, there was no break in service of the claimant. In such circumstances, the plea of the Management that the claimant does not fall within the definition of workman as defined under Section 2(S) of the Act or that claimant had not worked continuously for 240 days in a calendar year, can not be accepted. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532*, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :—

"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

13. As discussed above, in the case in hand engagement of the claimant as part time for doing intermittent nature of work and/or for cleaning the BSNL premises is duly admitted by the Management in its written statement as well as evidence. The Management has not filed any document in the form of abstract of attendance of claimant or other such workers so as to show that claimant has not completed 240 days in a calendar year. In such circumstances, statement of the witness of the claimant who appeared as WW1 can not be brushed aside, more so for the reason that work of cleaning of the bank premises is of regular and perennial in nature and further that the claimant was in the employment of the Management since 1/10/1992.

14. Net result of the aforesaid discussion is that there is relationship of Employer-employee between the Management and that the claimant had worked with the Management for 240 days in a calendar year.

15. Now the vital question for consideration is as to whether the demand of workman/claimant Smt. Ashok Lata, part time sweeper, made through the applicant Union that she be given benefit of circular dated 20/11/2000 (Ex.WW1/6) issued by the Management is just and fair. The Management had not confirmed the claimant as Full Time casual labour as per notification dated 20/11/2000, The claimant had in fact filed Writ Petition before Hon'ble High Court and after decision of the Hon'ble High Court, the representation of the claimant Ashok Lata was considered by the Committee

constituted by the Management, which decided that case of Ms.Ashok Lata did not fall within the criteria of regularization. No doubt, the claimant Ashok Lata had not challenged the disposal of her representation dated 4/1/2006 vide order dated 4/1/2006 (Ex.WW1/5), but the fact remains that the cause of action accrued in her favour continued to survive as she continued working as Part Time Sweeper with the Management even when the present claim petition was filed. Perusal of the record shows that in relation to the conversion of Part Time Casual Labourers working for less than 4 hours per day into full time casual labourer, order dated 25/8/2000 (Ex.MW1/W-6) was issued by the Govt.of India to all concerned of Telecom Circles/Districts and other Administrative Units with the direction that as one time relaxation, Part Time casual labourers with less than 4 hours of duty per day, who have worked for 240 days in the preceding 12 months may be converted into full time casual labourers and that they should be engaged as casual labourers subject to suitability and qualifications. Another order/ guidelines dated 29/9/2000 (Ex.MW1/W-7) were issued by the Govt. of India for regularization of Casual Labourers which inter alia provided that all part time casual labourers who were working for less than four hours per day and were converted into full time casual labourers may be regularized. To the same effect is the circular/guidelines dated 20-11-2000 (Ex.WW1/1) issued by the Office of Chief General Manager, Telecommunication UP (West), Dehradun. Even if the contention of the Management that the claimant was working as part time sweeper and her working hours were not fixed, is accepted, then also action of the Management in not considering the claimant for conversion into casual labourers under the guidelines dated 25/8/2000 (Ex.MW1/W-6) can not be said to be just and proper, inasmuch the case of the claimant did fall in the category of the **all part time casual labourers who were working with the Management for less than four hours per day**. It is worthwhile to mention here that MW1 Anoop Bajpai, Asstt. General Manager (Admn.) working with the Management has conceded in his cross examination that in the letter Ex.MW1/W-3 and Ex.MW1/W-4 the basic pay of the claimant was shown as Rs.2550/- as on 1.6.1996 and further that half of the basic was fixed as salary alongwith DA etc., meaning thereby that the claimant was being paid half of the basic salary of the regular/permanent employee who were performing duty for 8 hours. This would show that the claimant was working for about 4 hours in a day and that is why her basic wage/salary was fixed half of the basic of regular/permanent employee. As mentioned above, guidelines/order dated 25/8/2000 (Ex.MW1/W-6) and order dated 29/9/2000 (Ex.MW1/W-7) issued by the Govt. of India clearly stipulated that **all part time casual labourers who were working even for less than four hours per day be converted into full time casual labourers**. Thus, it was incumbent upon the Management to comply with the directions of Govt. of India issued vide aforesaid orders/guidelines, on the basis of which order dated 20/11/2000 (Ex.WW1/1) was issued by the office of DGM (Admn.),BSNL, Telecom Circle, Dehradun and to give benefits of the same to all concerned including the claimant Smt.Ashok Lata who had been admittedly working with them since 1/10/1992 and was being paid half of the basic wage payable to the full time regular employees. Resultantly, it is held that action of the Management in not giving benefits to the claimant Smt.Ashok Lata (now deceased) as per circular dated 20/11/2000 was unjust and illegal. Consequently, the demand made in this respect by the Applicant Union is held to be just, fair and legal.

19. Having regard to the aforesaid facts and circumstances of the case, Management is directed to regularize the services of the workman/claimant Ashok Lata as full time casual labourer /sweeper in view of circular dated 20.11.2000 and all consequential monetary benefits viz. payment of difference in wages be made to her legal heirs, within three months of the publication of this Award. Award is passed accordingly.

Date : 25.06.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारत के पुरातत्व सर्वेक्षण, आगरा एवं उनके कर्मचारी के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 30/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2018 को प्राप्त हुआ था।

[सं. एल-42011/70/2006-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 30/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Archeological Survey of India, Agra and their workmen, which was received by the Central Government on 10.08.2018.

[No. L-42011/70/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR****Industrial Dispute No. 30/2007****Between:**

Shri Keshpal Singh, President,
All India Archaeological Survey Mazdoor Union,
43/305/18, Nai Awadi, Near Mishan Charch,
Sikandra,
Agra(U.P.)-282001

AND

Archeological Survey of India,
Agra Division, 22, Mall Road,
AGRA (U.P.)-282001

AWARD

1. Central Government, MOL, vide notification no. L-42011/70/2006-IR(DU) dated 06.06.2007 has referred the following Industrial Dispute to this Tribunal for adjudication.
2. “Whether the demand of All India Archaeological Survey Mazdoor Union for appointment of Shri Birendra Singh S/o Shri Jeewan Lal Ex Monument Attendant who retired on medical grounds on compassionate grounds, is legal and justified? If yes, to what relief the applicant is entitled to?”
3. The case of the worker as set up by union is that one Jeewan Lal was working as Monument Attendant under the management at Agra who was relieved from his services on 11.01.2000 on the ground of serious illness. Shri Jeevan Lal requested the management that his son Birendra Kumar be appointed at his place to as to maintain the family members. After retirement of Sri Jeewan Lal on medical ground, Shri Asharfi Lal who was also working as Monument Attendant was retired on medical grounds from the service of management and after his retirement his son was given compassionate appointment by the management. It is also alleged that Shri Jeevan Lal since 2000 till now is raising his demand for the appointment of his son on compassionate ground but his son was not given appointment on compassionate grounds by the management as result of which he was not able to meet the medical expenses. Union has thus prayed that Shri Birendra Singh S/o Shri Jeewan Lal be appointed on compassionate ground considering his educational qualification and he be also allowed arrear of wages w.e.f 11.02.2000.
4. Along with the claim petition the Union has filed a no. of representations paper no. 2/5-13 written by Jeewan Lal to the department. And also medical certificate issued by CMO, Agra in the name of Jeewan Lal.
5. Management filed its reply alleging that the opposite party is not an industry as it discharges the sovereign functions of Government of India. The employees working under the management are governed by CSS (Conduct Rules 1965). It is further alleged that the compassionate appointment is a matter of giving financial assistance to an economically distressed person and it is not a fundamental right of an employee as such compassionate appointment cannot be claimed as a matter of right. And to consider the appointment on compassionate ground a committee is constituted as per guidelines of the Government which considers each case on its merit considering the Financial resources, liabilities / assets etc of the family of the claimants and recommends if the claimant is entitled to appointment on compassionate grounds or not.
6. On merit it is stated by the management that Shri Jeevan Lal was retired from the service of the department on medical grounds w.e.f 11.01.2001 and the case of Birendra Singh son of Jeewan Lal was forwarded to the Director General of the Department for consideration of compassionate appointment and the application of Shri Jeewan Lal for providing his son appointment on compassionate ground was referred to the committee constituted to consider the appointment as per guidelines of Department of Personal and Training. The application of the applicant was examined by the said committee in detail taking into consideration committee recommended that it is not FIT case for appointment on compassionate grounds.
7. It is further alleged that the case of son of Shri Asharfi Lal was also sent to the committee and the committee after considering his circumstances, financial position, economic resources, liabilities / assets etc. recommended his case as fit case for compassionate appointment and he was accordingly appointed on compassionate grounds and the facts and the circumstances of both the cases are different therefore cannot be compared to each other.

8. Therefore the present reference is baseless, misconceived and improper, as such is liable to be dismissed.
9. Management along with their written statement has filed a photocopy of award rendered by CGIT, Jaipur.
10. Union has examined Shri Birendra Singh as WW1 in support of their case whereas Management has examined Shri Kamal Kishore Sharma as MW1.
11. The Union filed photocopy of documents 42/2-12.
12. I have heard the arguments of both the sides at length and perused the record.
13. Authorized representative for the worker has contended that the management has refused to employ Birendra Singh on compassionate ground without any sufficient reason and appointed others whose cases were on the same footings as of Birendra Singh and the management has not acted judiciously in his case. Authorized representative for the management controverted the contention of representative for the union and argued that the case of Birendra Singh was considered by the Director (Admin) and his case was not found fit on the report of committee taking into account the financial resources of the families of the deceased.
14. On behalf of the union Sri Birendra Singh has been examined as w.w.1 who has deposed that his father late Sri Jeevan Lal opted for retirement on medical grounds. Thereafter one other person Asharfi Lal also opted for retirement and his son Devendra was appointed on compassionate ground. He has further deposed that his father died on 07.11.11. Department has not conducted any inquiry regarding financial status of the family of his father. They are three brothers who are in private jobs. He has denied this fact that he was not given appointment due to his better financial status. He received a letter from the department that he was not found fit for appointment. He was asked the question that son of Asharfi Lal was given appointment on compassionate ground as his financial status was not good. On this witness replied that he does not know about the financial status of Asharfi Lal but he has stated about himself that his financial status is also pitiable.
15. Management has examined M.W.1 Sri Kamal Kishore Sharma who stated that in his department compassionate appointment are made by Director General. Birendra Singh also applied for the same and his application was referred to Director General and from there his application was rejected as his case was not found fit as per his order paper no.5/16 wherein financial condition of Birendra Singh is found good.
16. In his cross examination he has stated that deceased Jeewan Lal has taken VRS on medical ground with the request that his son Birendra Singh be given appointment on compassionate ground. He has further stated that Birendra Singh was not given appointment considering the financial status of his father Jeevan Lal but he has stated in clear words that he does not know which officer has conducted inquiry regarding financial status of the family of Jeewan Lal.
17. From the above evidence it appears clear that the only hindrance found by Director (Admin) for appointment of Birendra Singh son of Jeewan Lal on compassionate ground is that the financial status of the family of Jeewan Lal was found good by the report of committee which makes it clear that if above report was not there Sri Birendra Singh would have been given appointment of compassionate ground. As admitted by M.W.1 he does not know which of the officer conducted inquiry regarding financial status of Jeewan Lal and secondly no such report of the committee has been filed by the management on the basis of which the compassionate appointment to Sri Birendra Singh was refused and also this tribunal would have expressed its opinion regarding authenticity of the report of committee if the same was filed by the management. Besides this in paragraph 4 of the order of Director (Admin) dated 07.10.03 paper no. 5/16 reveals that there is no finding of the report of the committee that financial resources of Sri Birendra Singh are such that he may not be given appointment on compassionate ground.
18. Thus the management has deliberately concealed the most important and relevant document which is the report of Committee on the basis of which the appointment of Birendra Singh on compassionate ground was refused.
19. Therefore, for the reasons given above the action of the management for not giving appointment on compassionate ground to Sri Birendra Singh is neither legal nor justified. Management is therefore, directed to appoint Sri Birendra Singh against the post of Group "D" within two months from receiving the award after being notified by Mol & Employment, New Delhi.
20. Reference is therefore answered accordingly in above terms.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महानिदेशक, केन्द्रीय सरकार स्वास्थ्य योजना, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 42/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-42011/195/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 42/2018) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Director General, Central Government Health Scheme, New Delhi & Others and their workmen, which was received by the Central Government on 13.08.2018.

[No. L-42011/195/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 42/2018

Between—

The General Secretary,
All India CGHS Employees Association,
Plot No. 8-11, Ratan Lal Nagar,
Kanpur (U.P.) -208022.

AND

1. The Director General,
Central Government health Scheme,
Nirman Bhawan,
New Delhi-110011.
2. The Additional Director
Central Government health Scheme
Plot No. 8-11, Ratan Lal Nagar,
Kanpur (U.P.)-208022.

AWARD

1. Central Government, MOL, vide notification No. L-42011/195/2017-IR(DU) dated 01/05/2018 has referred this Industrial Dispute to this Tribunal for adjudication.
2. “Whether the action of Management of Additional Director, Central Government Health Scheme, Kanpur in transferring the workman Sh. Devraj Singh, from Ratanlal Nagar, Wellness Centre to Saket Nagar, Kanpur vide office order dated 30.09.2016, is fair, just & legal? If not, to what relief the workman is entitled to & what directions are necessary in this respect?”
3. The case of the union on the behalf of the workman Devraj Singh is that the applicant was posted as Pharmacist in CMSD, CGHS, Ratan Lal nagar, Kanpur i.e. administrative office before his transfer order dated 30.09.2016; That the applicant was elected for the post of General Secretary of AICGHS Employees Association, Kanpur (Recognized) elections held on May 2015 for the tenure of two years. (Annexure-1); That further the applicant was elected as General Secretary of AICGHSEA, Kanpur in the elections held on April 2017 for next tenure of two years and hold the post till date (Annexure-2); That being the General Secretary of AICGHSEA, Kanpur applicant is Chief Executive of the Association. OM No. 27/3/69-Estt. (B) dated 8th April 1969 states that the Chief Executive i.e. General Secretary of the Union be granted the facility of seeking transfer to the headquarters of the appropriate head of the administration (Annexure-3); That the applicant is a Union Functionary the OM No. 27/7/88/CS (IV) dated 19th August 1988 Department of Personnel and Training, Government of India clearly states that Union Functionaries should not be shifted from main administrative office to subordinate office. (Annexure-4); That the applicant was illegally transferred from CMSD, Ratan Lal Nagar, Kanpur (Additional director office i.e. Administrative office) to CGHS Wellness Centre, Saket Nagar, Kanpur (Subordinate office

away from Administrative office). (Annexure-5); that the General Secretary, AICGHSEA, Kanpur is a protected/privileged workman under the Trade Union policies. Therefore Transferring the General Secretary from the main administrative office to subordinate office is against the policies of Government of India and is not fair, just and legal; That the application has exhausted all the channels of higher authorities for the grant of relief but all has gone in vein. (Annexure-6,7 and 8)

4. On the basis of above pleadings it has been prayed by the union that this Hon'ble Tribunal may be pleased to quash the transfer order dated 30.09.2016 and pass such further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.
5. In the reply of the claim management has admitted that the worker was posted as pharmacist in CMSD, CGHS Ratan Lal Nagar Kanpur i.e. Administrative Office before his transfer order dated 30.09.2016. It is further admitted that the worker was elected for the post of General Secretary of AICGHS Employees Association Kanpur (recognized) on the basis of election held in May 2015 for the tenure of 2 years and it is also admitted that the worker was elected as General Secretary of AICGHS employees Association Kanpur in the election held on April 2017 for the next tenure of 2 years. Regarding OM number 27/7/88/CS (IV) dated 19.08.88, DOPT Government of India, it is pleaded that this rule is meant for parent association and not for branch association. The transfer of the worker was made on administrative ground in public interest. The dispensaries / hospitals are excluded from the definition of Industry. It is also alleged that at present worker I posted at CSD/CGHS Ratanlal Nagar Kanpur, vide office order dated 16.03.18 as demanded by worker.
6. Worker has not filed any rejoinder.
7. Both parties have filed documents along with pleadings which shall be discussed at appropriate stage.
8. Worker Dev Raj Singh General Secretary of AICGHSEA Kanpur has filed his evidence on affidavit.
9. Additional Director Dr. Manjul Kumari CGHS, Kanpur has filed her evidence on affidavit.
10. I have heard both parties at length and have perused the records of the case.
11. Worker Dev Raj Singh. General Secretary, AICGHS Employees Association Kanpur, has filed his affidavit in evidence and supported his version as is pleaded in the claim petition. He also stated that being General Secretary of the aforementioned Association he is chief executive as per OM No.27/3/69 dated 08.04.69 and it provides that Chief Executive i.e. General Secretary of the Association is granted facility of transfer to the Head quarter of the appropriate head of the Association and the OM is filed by the worker as Annexure-3 to the claim petition. By a bare perusal of section 3 of the OM it is clear that Chief Executive as defined in the constitution of the Association or the General Secretary may be brought on transfer to the head quarter or any other office under his control at the head quarter. It is also alleged in the affidavit that worker Dev Raj Singh being General Secretary of the Association I a protected / privileged worker under the Trade Union Act, therefore his transfer order dated 30.09.16 from the main administrative office to subordinate office is against the policy of the Government. This witness has not been cross examined by the management representative Dr. S M Shukla. It appears that no cross examination was done by the worker believing his evidence on affidavit is correct.
12. Further on behalf of the management Dr. Manjul Kumari Additional Director, CGHS, Kanpur has filed her evidence on affidavit in which she has not refuted any facts alleged by the worker but it is alleged that the transfer was made on administrative ground in public interest. As the worker who is General Secretary of the Association has been transferred to Wellness Center Saket Nagar Kanpur, which is CGHS dispensary it cannot be treated as administrative office or any other office. The worker being General Secretary will be under direct control of the in-charge of the Wellness Center which reveals that the transfer order of the worker to wellness center Saket Nagar, Kanpur on 30.09.16 is against the provision of OM dated 08.04.69.
13. M.W.1 Dr. Manjul Kumari, has also stated that at present worker is posted at CMSD, "CGHS, Ratanlal Nagar by the office order dated 16.03.18 as demanded by the applicant. The witness has admitted in her cross examination that transfer order of worker Dev Raj Singh dated 16.03.18 is passed because Dev Raj Singh is the General "Secretary and on the basis of seniority.
14. Thus it is evident that Sri Dev Raj Singh, General Secretary of AICGHSEA has been transferred by the order 30.09.16 from CMSD Store Ratan Lal Nagar to Wellness Center Saket Nagar, and on the request of Dev Raj Singh being General Secretary he was again transferred back to CMSD Store In-charge by the office order dated 16.03.18, considering the provision laid down in the OM dated 08.04.69.
15. M.W.1 Dr. Manjul Kumari, has stated in her affidavit that dispensaries / hospitals are excluded from the applicability of the term of Industry but in her cross examination she has deposed that as per her knowledge she has stated that the jurisdiction of this tribunal is barred for CGHS and hospital but she has not given any basis as to how tribunal lacks jurisdiction to entertain the present reference. Beside this she has never challenged the reference issued by Government of India, Ministry of Labor & Employment, New Delhi.

16. Therefore, from the above discussions the tribunal is of the view that the action of management of Additional Director, CGHS, Kanpur in transferring the workman Sri Dev Raj Singh General Secretary AICGHS Employees Association from Ratan Lal Nagar Wellness Center to Saket Nagar dated 30.09.16 is neither fair nor just and is in violation of OM dated 08.04.69.
17. As far as relief is concerned as the worker Dev Raj Singh on his representation has been transferred back to CMSD In-charge Ratan Lal Nagar, the place where he had already been posted, therefore, he will not be entitled for any relief.
18. Reference is answered accordingly in the above terms.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उप अधीक्षक बागवानी, भारत के पुरातत्व सर्वेक्षण, आगरा एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 09/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-42012/65/2008-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 09/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Deputy Superintending Horticulturist, Archeological Survey of India, Agra and their workmen, which was received by the Central Government on 13.08.2018.

[No. L-42012/65/2008-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Present : SRI SHUBHENDRA KUMAR, HJS

Industrial Dispute No. 9 of 2009

Between-

Heera Lal son of Sri Chhotey Lal,
Dandiyapura, Narain Bagh Road,
Near Sadar Shamshan Ghat,
Jhansi.

And

Deputy Superintending Horticulturist,
Archeological Survey of India,
Horticulture Division No. 1, Taj Mahal
AGRA(U.P.)-282001.

AWARD

1. Central Government, MOL, vide notification No. L-42012/65/2008-IR (DU) dated 17.02.2009 has referred the following Industrial Dispute to this Tribunal for adjudication.
2. “Whether the action of the management of Archaeological, Survey of India, in terminating the service of Shri Hira Lal w.e.f 01/12/2007 is legal and justified? If not, to what relief the workman is entitled to?”
3. The case of the worker Heera Lal is that for the first time he was engaged at the post of Mali under sub-division Jhansi Quila Garden on 01.07.2000 and worked as such continuously till 30.11.07 and also worked more than 240

days in each calendar year, and thus has attained a right to get service under the management. Opposite party without any reason has suddenly dispenses with the service of the worker on 01.12.07 in breach of the provisions of section 25F of the Act. Opposite party has also breached the provisions of section 25G and 25H of Industrial Disputes Act, 1947. Several junior persons are still working in the management and after terminating the services of the worker management appointed fresh hands viz., Kailash, Suresh and Pradip who are working with the management. Opposite party is in the habit of appointing directly persons in Group 'D' category ignoring the legitimate claim of the worker and the worker made repeated requests before the management but all in vain.

4. Under the facts and circumstances, worker has prayed that he be reinstated in the service of the opposite party with full back wages, continuity of service and with all consequential benefits.
5. Along-with the claim petition the worker has also filed a list of workers who are alleged to have been appointed by the management with effect from 1986 till date.
6. Management filed written statement denying the entire claim of the worker stating that the claim of the worker is not covered under section 25F, 25G and 25H of the Act; management had never terminated the services of the worker; opposite party is not an industry within the meaning of section 2(j) of the Act; provision of section 2-A of the A are not attracted in this case as the casual job of applicant were never terminated by the management; worker has no right to claim reinstatement; worker had never worked at the post of Mali; opposite party engages daily paid casual workers from open market for shorter period; worker had never worked continuously with the opposite party and the worker had never worked continuously for 240 days in any calendar year.
7. On the basis of above, it has been prayed that the claim of the worker is liable to be rejected being devoid of merit.
8. Worker has also filed rejoinder statement wherein nothing new has been pleaded except reiterating the facts already pleaded in the claim petition.
9. I have heard the arguments of both the parties and have also perused the record of the case
10. Worker Heera Lal has examined himself as w.w.1 in support of his claim whereas management has examined Sri Pradip Kumar Singh as M.W. 1 in support of its case.
11. It is pertinent to mention here that worker application for summoning documents from the management was allowed by order dated 02.06.10 and in case of non-availability of the documents affidavit of some senior officer of the management should be filed, but the management neither filed any documents nor any affidavit was filed by it, therefore, taking adverse inference it is held that the management deliberately has not filed the documents with a view to frustrate the claim of the worker.
12. Worker in his cross examination has clearly deposed that he worked with the management from 01.07.2000 to 30.11.07 and also he had completed more than 240 days of continuous service in each calendar year. He has further deposed that after termination of his services management engaged fresh hands like Kailash, Neeraj and Manik. In the year 2004 management has notified the vacancies and he also applied and he was interviewed but he was not given appointment. He has also deposed that he was engaged as daily wager in Jhansi Fort Garden and it is wrong to suggest that as per requirement he was engaged by the management and lastly he has deposed that he had not worked under the management after 1.12.07.
13. M.W.1 Sri Pradip Kumar Singh, in his examination in chief has stated that the worker Sri Heera Lal was working as daily rated worker on temporary basis and the worker had not been issued any appointment letter. The work of Jhansi Fort Garden is of temporary nature and casual workers are engaged from open market on need basis. Worker had never worked continuously.
14. In his cross examination the witness has stated that he personally knows the worker Heera Lal. He expressed his ignorance about the fact that for which period the worker had worked at Jhasni Fort Garden. He further stated that worker used to work as mali and also used to look after the garden. He does not remember as to when Kailash, Suresh and Pradip were engaged on work. Witness has clearly admitted that in the year 2004 for the post of Mali applications were invited and annexure 8 is the order of interview with regard to the worker. Worker was being paid wages through muster roll and he has no knowledge whether for the period 2000 to 2007 muster rolls are available or not and he has no knowledge and as to why muster rolls have not been filed.
15. Worker Heeralal w.w.1 has stated on oath in his evidence that he was working as casual labor continuously from 01.07.2000 to 30.11.07 and he has worked for more than 240 days every year till his termination. This fact has not been denied by M.W.1 Sri Pradip Kumar Singh as he has deposed that he does not remember that the period of working of Sri Heera Lal, therefore, the statement of worker has not been denied by the witness of the management that the worker worked continuously for 240 days every year during the period 01.07.2000 to 30.11.07. The only proof of working of Heera Lal worker is the muster roll through which Heera Lal was paid wages. As it is admitted by M.W.1 in clear words that payment of wages to the worker was done through muster

roll and the muster rolls for the relevant period were summoned by this tribunal on the application of worker by order dated 02.06.10, but these muster rolls being most relevant documents were not filed by the management nor management has given any satisfactory reason for not filing of muster rolls. M.W.1 Pradip Kumar Singh in his cross examination has again shown his ignorance regarding availability of muster rolls from 2000 to 2007 and further he has deposed that he does not know as to why these muster rolls were not filed, therefore, under these circumstances this tribunal is of the firm view that the management has deliberately withheld the most important documents i.e. muster rolls for the period 2000-2007. As no proper justification is given for not filing it and contrary to it management witness has shown his complete ignorance regarding availability and reason for not filing he muster rolls before this tribunal, therefore, there is no hesitation rather the tribunal is bound to take adverse inference against the management and believing the statement of worker Hera Lal that he has worked continuously for 240 days every year during the period 2000-2007 as casual labor and his services were terminated under oral orders dated 01.12.2007, without making payment of retrenchment compensation, therefore, provisions of section 25F have been breached by the management in the case of the worker.

16. Authorized representative for the management has contended that the management used to employ / engage daily wagger casual labors from open market according to need and till completion of work for which they are engaged are retained in the service of the management but the management failed to prove its case by adducing any cogent evidence and contrary to it the case of the worker is not denied by the management witness and he has sown his ignorance and lack of knowledge in replying relevant questions during his cross examination.
17. Worker has alleged that junior to him were engaged by the management but no evidence has been given by the worker on the point and the authorized representation has not made any submission on the point hence it is held that the case of the worker that juniors to him were retained in the service is not proved.
18. Accordingly on the basis of above, it is held that the action of the management of ASI, Agra in terminating the services of the worker with effect from 01.12.2007 is neither just, legal and proper being in breach of section 25F of Industrial Disputes Act, 1947, therefore, worker is entitled to be reinstated in service but without any back wages.
19. Award is made accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, रजिस्ट्रार, इलाहाबाद विश्वविद्यालय, इलाहाबाद और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 52/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.08.2018 को प्राप्त हुआ था।

[सं. एल-42012/21/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 52/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Allahabad University, Allahabad & Others and their workmen, which was received by the Central Government on 13.08.2018.

[No. L-42012/21/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 52 of 2017

Between-

Sri Arbind Kumar Dwivedi,
Son of Ganesh Prasad Dwivedi,
Village, Anapur,
Post-Anapur Nawabganj
Allahabad.

And

1. The Registrar,
Allahabad University,
Allahabad.
2. The Director of M/s Fighting Four Security Service Pvt. Ltd.
FF-59, 88, Khajana Shopping Complex,
Ashiana,
Lucknow.

AWARD

1. Central Government Mol, New Delhi, vide notification no. L-42012/21/2017-IR(DU) dated 06.07.17, has referred the following dispute to this tribunal for adjudication-
2. Whether the worker Arbind Kumar Dwivedi son of Sri Ganesh Prasad Dwivedi can be said to be the workman of Allahabad University, 2. And if so whether the termination of services of the workman is legal and justified? 3. If not to what relief the concerned workman is entitled and from which date.
3. After receipt of reference from the Ministry, notice was sent to the worker as well as to the opposite parties but none appeared in the case. Neither any one appeared on behalf of the workman nor workman has filed is claim petition in support of his case, despite providing of repeated opportunities to the worker by this tribunal. It thus appears that the worker is not inclined to prosecute the reference before this tribunal; AR for the management was heard who requested to decide the reference for want of pleadings and evidence therefore, the reference is bound to be answered against the worker for want of pleadings and evidence.
4. Accordingly reference is answered against the worker.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, भारी जल संयंत्र, परमाणु ऊर्जा विभाग, वडोदरा (गुजरात) एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 95/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.07.2018 को प्राप्त हुआ था।

[सं. एल-42011/90/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 95/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Heavy Water Plant, Department of Atomic Energy, Vadodara (Gujarat) and their workmen, which was received by the Central Government on 26.07.2018.

[No. L-42011/90/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 11th July, 2018

Reference: (CGITA) No. 95/2014

The General Manager,
Heavy Water Plant,
Department of Atomic Energy,
P.O. Fertilizer Nagar, NH 8,
Vadodara (Gujarat) – 391750

...First Party

V/s

The President,
Bhari Pani Kamdar Sangh,
Administration Building, Heavy Water Plant,
P.O. Fertilizer Nagar, NH 8,
Vadodara (Gujarat) – 391750

...Second Party

For the First Party : Shri Bhagyodaya Mishra

For the Second Party : Shri Vinod J. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/90/2014–IR(DU) dated 28.10.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Heavy Water Plant, Baroda in not paying the House Rent Allowance to their newly appointed employees and the employees, who have vacated the Government quarters is legal, proper and just? If not, to what relief, the concerned employees are entitled to?”

1. The reference was received on 28.10.2014 from Ministry of Labour and Employment, New Delhi for adjudication. The second party union The President, Bhari Pani Kamdar Sangh, Administration Building, Heavy Water Plant, P.O. Fertilizer Nagar, NH 8, Vadodara, hereinafter referred to as “union” submitted the statement of claim Ex. 5 on 10.01.2017 alleging that the union is the recognized representative of the employees of Heavy Water Plant, Baroda, Department of Atomic Energy, Government of India and the first party is the General Manager of the aforesaid establishment Heavy Water Plant. Both the parties reached to a settlement on 09.07.2010 for payment of House Rent Allowances to 17 employees who purchased own Houses and vacated the departmental flats. The said settlement was binding on the employees union and the respondent/first party employers in accordance with the provisions of Section 19 of the Industrial Disputes Act, 1947. It is further alleged that these employee are similarly placed as the employees who are being paid House Rent Allowance (H.R.A.) in accordance with the settlement dated 09.07.2010 reached between the union and the first party. Thus the denial of the H.R.A. to these employees is discriminatory and violative of the provisions of the settlement. Thus the second party union has prayed for payment of H.R.A. to the employees on whose behalf the union has raised the dispute and who have been denied the H.R.A. on the ground that they have shifted in their constructed houses after vacating the official residence.

2. The first party despite giving number of opportunities did not submit the written statement despite filing vakalatpatra Ex. 8 of his advocate Shri Bhagyodaya Mishra, therefore, on 08.03.2018, the reference was ordered to proceed ex-parte against the first party.

3. The second party union on 09.07.2018 submitted the affidavit Ex. 9 of one Girishkumar Hariprasad Pandya, President, Bhari Pani Kamdar Sangh reiterating the averments made in the statement of claim submitting that the second party union raised the dispute of the demand of H.R.A. of their employees who have vacated the quarters or not allotted the quarters. In the matter, an amicable settlement was reached before the Regional Labour Commissioner where it was decided that the first party will pay the H.R.A. to the employees who have not allotted the quarters and are not residing in the official quarter's w.e.f. 01.07.2010 as per settlement. Further the employees who have joined service on or after 01.07.2010 or attended the job by transfer order and being not paid H.R.A. though they have not been allotted quarters as per the settlement arise between the parties on 09.07.2010. It is further submitted that the first party has been paying H.R.A. to its 32 employees mentioned in the enclosed list annexure A as per the settlement and arbitrarily the employees who raised this dispute have been denied the H.R.A.

4. Though the first party did not file the written statement but his advocate Shri Mishra was heard at the time of hearing the second party advocate. It is a case of the second party union that they were allotted official residences but later vacated it and they have been claiming H.R.A. on the ground that similarly situated employees have been granted H.R.A. on the basis of the settlement reached between the union and the first party.

5. The rules regarding grant of H.R.A. in the Government of India are as under:

“THOSE OCCUPYING OR REFUSING GOVERNMENT ACCOMMODATION NOT ELIGIBLE FOR HOUSE RENT ALLOWANCE

4. The grant of House Rent Allowance shall be subject to the following conditions:-

(a) (i) To those Government servants who are eligible for Government accommodation, the allowances will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with it, in places where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Urban Development from time to time making it obligatory for employees concerned to obtain and furnish ‘no accommodation’ certificate in respect of Government residential accommodation at their place of posting. In all other places, no such certificate is necessary.

(ii) Government servants posted in localities where there is at present no residential accommodation in the General Pool owned or requisitioned by the Central Government for allotment to them, need not apply for Government residential accommodation in order to become eligible for House Rent Allowance. But where Government quarters are available for the staff of specified Departments or for specified categories of staff of specified, the procedure of applying for the accommodation will be regulated under the rules of allotment of the Department concerned or of the local office of the Central Public Works Department, as the case may be.”

6. In the light of the aforesaid rules regarding the grant of H.R.A. in the Government of India, the employees who have been provided houses or where there is surplus Government residences and the employees either vacated the house to shift in his own residence or have not preferred to reside in the official accommodation despite allotment letter, in such case, the H.R.A. shall not be admissible but the case of the second party is that similarly situated employees have been granted H.R.A. as per the settlement as discussed above reached between the employees union and the first party, therefore, it would be a appropriate order that if the similarly situated employees have been granted H.R.A., the first party will also consider the case of the employees concerning this reference for grant of H.R.A. sympathetically.

7. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, बीएसएनएल, दूरसंचार विभाग, खेड़ा (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 15/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.07.2018 को प्राप्त हुआ था।

[सं. एल-40011/03/2010-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 15/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Department of Telecom, Kheda (Gujarat) and their workmen, which was received by the Central Government on 26.07.2018.

[No. L-40011/03/2010-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th July, 2018

Reference: (CGITA) No. 15/2010

The General Manager,
Telecom Department,
Bharat Sanchar Nigam Limited,
Door Sanchar Bhawan, Pij Road, Nadiad,
Kheda (Gujarat)

...First Party

V/s

The General Secretary,
Akhil Gujarat General Mazdoor Sangh,
2nd Floor, Arab Chambers,
Opp. Patharkuva Petrol Pump, Relief Road,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri B.D. Thakkar

For the Second Party : Shri M.H. Sangrayat

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/3/2010–IR(DU) dated 10.05.2010 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of General Manager, Telecom District, Bharat Sanchar Nigam Limited, in imposing a penalty of reduction of pay by one stage in the time scale of pay for a period of two years on their workman Shri Bhalabhai Valabhai Vankar vide order dated 01.11.2006 is legal and justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 10.05.2010 and received on 20.05.2010 from Ministry of Labour and Employment, New Delhi for adjudication. Both the parties submitted the statement of claim and written statement as the case may be. But in the reference, as old as the year 2010, the second party has not been leading evidence. On 12.02.2018, advocate for the second party, Shri M.H. Sangrayat moved an application Ex. 14 stating that the second party workman has been absent since last several dates and he has not been in his contact, therefore, he sought a last opportunity for leading evidence. Despite giving two opportunities on 09.04.2018 and 16.07.2018, Shri M. H. Sangrayat states that he is helpless in contacting the workman for leading his evidence.

2. Thus it appears that the second party workman is not willing to prosecute the reference.

3. Thus the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of General Manager, Telecom District, Bharat Sanchar Nigam Limited, in imposing a penalty of reduction of pay by one stage in the time scale of pay for a period of two years on their workman Shri Bhalabhai Valabhai Vankar vide order dated 01.11.2006 can be said to be legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 अगस्त, 2018

का.आ. 1250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उप-अधीक्षक बागवानी, भारत के पुरातत्व सर्वेक्षण, आगरा एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 106/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2018 को प्राप्त हुआ था।

[सं. एल-42011/55/1998-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 14th August, 2018

S.O. 1250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 106/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Deputy Superintending Horticulturist, Archeological Survey of India, Agra and their workmen, which was received by the Central Government on 10.08.2018.

[No. L-42011/55/1998-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR****Industrial Dispute No. 106/99****Between :**

President, A.S.I, Karamchari Parishad(INTUC)
68, Sector 16,
Sikandara,
AGRA(U.P.)-282001

AND

The Dy.Superintending Horticulturist, Archeological,
Survey of India, Horticulture Divn.No.1,
East Gate, Tajmahal,
AGRA (U.P) 282001.

AWARD

1. Central Government, MOL, vide notification no. L-42011/55/98/IR (DU) dated 06.05.1999 has referred this Industrial Dispute to this Tribunal for adjudication.
2. "Whether the demand of union for payment of bonus accounting year 1995-96 and 96-97 by the management of Archaeological Survey of India to 55 persons (as per annexure) is legal & justified? If so, to what relief the workmen are entitled?"
3. The Case of Union on behalf of 55 workers is that these workers were working in garden branch of the opposite party and are working continuously. The workers have not been paid bonus for the year 1995-96 and 96-97 by the employer where as rest of the workers working in different department of the employer have been paid there bonus regularly. It is further alleged that workers from serial no. 1 to 26 are employees of the department where as rest 27 workers are those workers whose service were dispensed with and they were re-employed under an agreement but they were not paid bonus as such all workers mentioned in the list appended to the reference order are entitled for bonus which may be allowed in their favor.
4. Management has filed a very lengthy written statement comprising of 39 pages but only such plea will be recorded as are necessary to decide the controversy involved in the terms of reference order.
5. It is alleged that reference is not an Industrial Dispute therefore does not fall within jurisdiction of this Tribunal; Reference suffer from mis-joinder and non- joinder and suffers from serious latches therefore bad in law; that the reference has been refereed by Central Government is without jurisdiction ;that workers involved in the present case are not workmen as defined under the act; that the workers had no lien or right on any regular and permanent post under the management; that management is not an employer; that it is not an industrial dispute.
6. On merit it has been pleaded that the claim of the union is highly misleading and misconceived hence not admitted. Workers are daily paid casual majdoors. It is also denied that management had ever paid ad-hoc bonus for the years 1995-96 and 96-97 to the workers. As the workers had never worked continuously for 240 days in any calendar year, therefore there does not arise any question of giving any ad-hoc bonus to the alleged applicants. As far as plea raised by the union in para 2 of their claim petition have been denied on the ground that management had never discharged the casual majdoors from their services. The claim of the union is after thought, concocted, incorrect hence is liable to be rejected. The action of the management is fully, proper, justified, and legal and no rules of natural justice have been violated in the present case.
7. On the basis of above it has been prayed by the management that the claim of the worker is liable to be rejected being devoid of merit.
8. Union has also filed rejoinder in the case but nothing new has been pleaded there in.
9. Management has filed photocopy of 3 documents per list dated 8.01.2001.
10. Management has filed affidavit of Sri Rakesh Kumar Verma in his evidence. On 11.08.2016 when the case was taken up for the cross-examination of management witness none was present from the side of worker therefore in cross-examination of management witness was treated nil. Union has also not filed any documentary or oral evidence in support of his case.

11. Therefore under the facts and circumstances of the case it is a case of no evidence hence union cannot held liable for any relief as claimed by him for want of evidence.
12. It is also held that union has failed to prove their case by adducing cogent and convincing evidence in support of their case.
13. Hence in view of findings recorded above the reference is bound to be answered against the union for wants of evidence.
14. Reference is answered accordingly against the union.

SHUBHENDRA KUMAR, Presiding Officer